

OVERSIGHT OF UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT

HEARING BEFORE THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS SECOND SESSION

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CONTENTS

SEPTEMBER 22, 2016

	Page
OPENING STATEMENTS	
The Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia, and Chairman, Committee on the Judiciary	1
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary	3
WITNESS	
The Honorable Sarah Saldaña, Director, U.S. Immigration and Customs Enforcement, Department of Homeland Security	
Oral Testimony	6
Prepared Statement	9
LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING	
Prepared Statement of the Karen Bass, a Representative in Congress from the State of California, and Member, Committee on the Judiciary	5
Material submitted by the Honorable Scott Peters, a Representative in Congress from the State of California, and Member, Committee on the Judiciary	56
APPENDIX	
MATERIAL SUBMITTED FOR THE HEARING RECORD	
Questions for the Record submitted to the Honorable Sarah Saldaña, Director, U.S. Immigration and Customs Enforcement, Department of Homeland Security	68
OFFICIAL HEARING RECORD	
MATERIAL SUBMITTED FOR THE HEARING RECORD BUT NOT REPRINTED	
Material submitted by the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Member, Committee on the Judiciary. This material is available at the Committee and can also be accessed at:	
<i>http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=105348</i>	

OVERSIGHT OF UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT

THURSDAY, SEPTEMBER 22, 2016

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Washington, DC.

The Committee met, pursuant to call, at 10 a.m., in room 2237, Rayburn House Office Building, the Honorable Bob Goodlatte, (Chairman of the Committee) presiding.

Present: Representatives Goodlatte, Smith, Chabot, Issa, King, Franks, Gohmert, Jordan, Chaffetz, Gowdy, Labrador, DeSantis, Buck, Ratcliffe, Bishop, Conyers, Lofgren, Jackson Lee, Johnson, Chu, Deutch, Bass, DelBene, Cicilline, and Peters.

Staff Present: (Majority) Shelley Husband, Chief of Staff & General Counsel; Branden Ritchie, Deputy Chief of Staff & Chief Counsel; Zachary Somers, Parliamentarian & General Counsel; Tracy Short, Counsel, Subcommittee on Immigration and Border Security; (Minority) Perry Apfelbaum, Staff Director & Chief Counsel; Danielle Brown, Parliamentarian & Chief Legislative Counsel; Gary Merson, Chief Immigration Counsel; Maunica Sthanki, Immigration Counsel; Micah Bump, Immigration Counsel; and Rosalind Jackson, Professional Staff Member.

Mr. GOODLATTE. Good morning. The Judiciary Committee will come to order, and without objection, the Chair is authorized to declare a recess of the Committee at any time. We welcome everyone to this morning's hearing on Oversight of U.S. Immigration and Customs Enforcement, and I will begin by recognizing myself for an opening statement.

U.S. Immigration and Customs Enforcement (ICE) is the Federal agency that is charged with enforcing the immigration laws of this Nation. Its mission statement is to protect America from the cross-border crime and illegal immigration that threaten national security and public safety. Its website boasts enforcement of over 400 statutes and touts the agency's focus on "smart immigration enforcement and combating the illegal movement of people and goods."

This sounds like an agency that is committed to devoting every available resource to vigilantly protect the American public, yet, under the policies of this President, safety and security for Americans appear to be far less important than the so-called immigration enforcement priorities, which result in hundreds of thousands of

unlawfully present and criminal aliens remaining in our communities.

Smart enforcement does not include allowing nearly 370,000 known, convicted, criminal aliens to walk the streets, and it defies common sense to designate removable aliens arrested for serious crimes as low priorities because they have not yet been convicted. They remain threats to the public despite the lack of a conviction.

Any policy that notifies violators in advance that they will not be prosecuted is simply unacceptable. How is that smart enforcement when the offenders know there are no consequences for their unlawful actions? It only encourages similar conduct by others. ICE cannot combat illegal immigration by refusing to arrest those who have knowingly violated our immigration laws or by releasing over 86,000 convicted criminal aliens over the last 3 years.

These are not policies that protect Americans and help secure our borders. During the last oversight hearing before this Committee on April 14, 2015, Director Saldaña testified that “ICE released 30,558 criminal aliens in fiscal year 2014 and that those aliens had a combined total of 79,059 criminal convictions associated with them.”

The Committee recently learned from a source that the number of convictions associated with those aliens increased substantially to more than 92,000, and ICE has now admitted that it knew of the additional 13,000 convictions at the time Director Saldaña appeared before the Committee.

I look forward to hearing the Director’s explanation for the difference between what she told us then and what was known to the agency since the data demonstrates that these criminal aliens pose an even greater threat to public safety than was represented to the Committee.

Specifically, there were 17 percent more convictions for homicide-related offenses, 22 percent more for robbery, 27 percent more for sexual assaults, 17 percent more for aggravated assaults, and 11 percent more convictions for domestic violence assaults. The failure to report this critical information raises serious questions about whether ICE intentionally distorted the true nature of these threats to Congress and the American public.

For the families of those killed by criminal aliens, those like Kate Steinle, Marilyn Farris, Casey Chadwick, Sarah Root, and Josh Wilkerson, assurances of smart enforcement ring hollow, and sadly, the number of victims continues to increase. Also troubling is the fact that despite clear indications that ICE’s enforcement priorities are placing Americans at greater risk, the President’s budget request for fiscal year 2017 asks for \$138 million less to detain and remove aliens next year, and worse, last year, ICE gave back \$113 million in funds that had been specifically appropriated for detention and removal purposes.

Consistent with this policy of non-enforcement, the President also requested \$23 million less for the Fugitive Operations Program in fiscal year 2017. Fugitive Operations officers must locate and arrest criminal aliens, often in a high-threat environment, after they have been released back into the community by sanctuary jurisdictions. With more than 300 sanctuary jurisdictions nationwide, there are more than enough removable criminal aliens to

warrant the additional \$23 million in funding for this important enforcement program.

This Administration's failure to allocate resources to critical program areas that directly impact ICE's ability to keep criminal aliens off the street belies any assertion that public safety is a primary concern. I want to thank Director Saldaña for appearing here today. I look forward to your testimony and to your responses to the questions I have outlined, as well as the concerns and questions of other Members of this Committee. Thank you very much.

It is now my pleasure to recognize the Ranking Member of the Committee, the gentleman from Michigan, Mr. Conyers, for his opening statement.

Mr. CONYERS. Thank you, Chairman Goodlatte, and I begin by thanking Director Sarah Saldaña for her service and appearing before the Committee today. As head of the United States Immigration and Customs Enforcement, Director Saldaña has one of the most challenging jobs in government. With limited resources, she must ensure that our immigration statutes are enforced, as well as ensure that this is done in a fair, just, and balanced way.

For that reason, the Department of Homeland Security's enforcement priorities recognized that millions of unauthorized immigrants have been living and working in the United States for 5 or 10 years or longer. These men and women are parents of United States citizen children; pray at our churches, synagogues, mosques, and other houses of worship; and make significant contributions to our economy. Their removal is not and should not be an enforcement priority.

We are here today to, first, examine how our immigration laws are enforced and how this enforcement affects our communities. As we conduct this examination, however, we must keep in mind that many of the challenges faced by ICE and immigrant communities are a result of Congress's failure to pass comprehensive immigration reform. Yet we are now in the waning days of the current Congress, which will soon adjourn without having a justice failure, even though everyday families continue to be separated, and hard-working members of our society are forced to live in the shadows.

Despite all of these challenges, the majority continues to focus exclusively on immigration enforcement that would criminalize entire communities. The Republic Presidential nominee advocates policies based on the abhorrent 1950's program, Operation Wetback. If enacted and carried out, the ensuing chaos would be a tragedy, rivaling the darkest episodes in America's history. Comprehensive immigration reform is the only real option to repair our broken immigration system, in my opinion.

Another issue we should consider at this hearing is the fact that there is a significant increase in the time non-criminal asylum seekers are being detained. United Nations High Commissioner for Refugees states that the detention of an asylum seeker is an exceptional circumstance and should only be used for a limited period of time. I agree, and I also encourage ICE to use its parole authority to release asylum seekers who have passed credible fear screenings or, in the alternative, to consider non-custodial forms of alternatives to detention.

I am pleased to see that the Department of Homeland Security will be conducting a review of private prison policies. I have long been deeply concerned about the use of private prison companies, particularly in light of reports of serious medical neglect, physical abuse, preventable deaths, and other forms of mistreatment. The Department of Justice recently decided to end its relationship with private prison companies, in part because of abusive treatment of inmates.

I encourage ICE to follow suit and end its reliance on private prisons. Finally, yesterday, DHS announced a change in policy for Haitian nationals arriving at our ports of entry. I know this is a complex area of the law with no easy answers, but deporting Haitians back to a country still reeling from both a devastating earthquake and a cholera epidemic caused by the United Nations, their own admission, is concerning and warrants close oversight. I thank the Chairman for this time, and I yield back the balance, if there is any left.

Mr. GOODLATTE. Thank you, Mr. Conyers, and without objection, all of the Members' opening statements will be made a part of the record.

[The prepared statement of Ms. Bass follows:]

CONGRESSWOMAN KAREN BASS
REMARKS AND QUESTIONS
JUDICIARY COMMITTEE HEARING
 Oversight of U.S. Immigration and Customs Enforcement
 Witness Director Sarah Saldaña
 Thursday, September 22, 2016
 2237 Rayburn House Office Building
 10:00 AM



Good Morning, Chairman Goodlatte and Ranking Member Conyers.

Mr. Chairman,

Our immigration system is broken, yet we cannot seem to agree on how to fix it. While we debate this issue, thousands of children and families are waiting in the shadows on our soil. The history of our nation is a colorful one it includes those who arrived on our shores against their will, as well as those who arrived to escape persecution, flee violence, or in search of a better life.

Unaccompanied Minors

ICE has been deporting a record number of unaccompanied minors who for the most part have been given little or no legal representation. An image of targeting children would result in ICE living up to its acronym by sending a shiver down the spines of undocumented families.

Aging Out

I have heard troubling stories of ICE picking up young people at bus stops while they were waiting to go to high school. This gives the impression that ICE is counting down the days until a young person turns 18, and then making them a priority for arrest and deportation.

Question 1: Director Saldaña, are you familiar with the "NC6"? They are six high school students in North Carolina who arrived as minors and who, according to news reports, were arrested by ICE not long after they turned 18.

Question 2: In my opinion, students attending high school, some of whom dream of college, should not be our top priority for removal from this country. What is ICE's policy? Does ICE track or monitor adolescents and wait for them to reach 18? Does ICE utilize any other means for determining when an undocumented minor has turned 18? If so, what are the means currently being utilized? Is this standard policy? What is the purpose for this type of monitoring?

Legal Representation

Question 3: What is ICE's policy regarding legal representation for unaccompanied minors and any undocumented minors? Between the years of in 2015-2015 How many minors has ICE referred to Child Welfare agencies after their parents have been deported?

Mr. GOODLATTE. At this time, we will welcome our distinguished witness, and if you would please rise, I will begin by swearing you in.

Director Saldaña, do you solemnly swear that the testimony that you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

Thank you very much.

Let the record show the witness answered in the affirmative.

Director Saldaña was sworn in as the Director of the U.S. Immigration and Customs Enforcement on December 23, 2014. Prior to her appointment, she was the United States attorney for the Northern District of Texas. Previously, she served as an assistant district attorney for the Northern District of Texas, also serving as the deputy criminal chief in charge of the district's Major Fraud and Public Corruption section.

Director Saldaña graduated summa cum laude from Texas A&M University and received a J.D. from Southern Methodist University. Your entire written statement will be made a part of the record, and we ask that you summarize your testimony in 5 minutes, and welcome.

TESTIMONY OF THE HONORABLE SARAH SALDAÑA, DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY

Ms. SALDAÑA. Thank you, Mr. Chairman, Ranking Member Conyers. If I could have that little bit of time, if Ranking Member Conyers had any left, I would ask that you indulge me just a little bit over the 5 minutes, if possible.

Distinguished Members of this Committee, I appreciate the opportunity to discuss with you all the important work of ICE by providing you an overview of our progress over the past year, since the last time that I appeared before this distinguished Committee, as well as some challenges, which we continue to address.

There are many Americans who are not familiar with the full ambit of what ICE does to promote homeland security and to protect our communities. An average day, and I have got a banner with this information to remind me just exactly what our agency does; in the average day in the life of an ICE special agent, an officer, or attorney, results in the arrest of four human or sex traffickers—this is every day—7 child predators, 279 criminal immigrants, and the removal of 645 individuals.

Each day, personnel from ICE initiate 8 new sensitive technology investigations, block 3,055 malware attacks, and forensically process more than 17 terabytes—I have no idea what that is, but I think it is a lot—of data. I have committed significant time and energy to increase engagement with the numerous stakeholders through our communities.

I think everyone here would agree that it is important for those of us who serve in the Federal Government for the American public, we have got to have collective partnerships with local law enforcement agencies, elected officials, professional groups, and non-governmental organizations, as well as the citizens of those communities.

Another one of my goals is to ensure that each one of our employees has a voice, is mentored, feels empowered, and is recognized for his or her contributions to the agency and our mission. I believe this year's initial Federal employee survey results, which were just announced by the Office of Personnel Management on Monday, demonstrate our employee engagement is working. This is one of the commitments I made when I was nominated, and I was questioned about, how are we going to get ICE out of the cellar in terms of employee engagement?

We had an 11 percent increase, an 11 percent increase in global employee satisfaction. ICE-wide results exceeded last year's on each and every, I repeat, each and every question in the survey, and we had a 6 percent overall increase in participation in the survey. I am very proud of this. Perhaps the lesser known work of ICE is how we strive to protect our Nation's homeland security.

Under the visa security program, which I have testified about before, ICE agents are assigned to diplomatic posts all over the world. ICE is the second largest contributor of Federal agents to the Joint Terrorism Task Forces across the country, led by the FBI. We support and complement counter-terrorism investigations with ICE's unique immigration and trade-based authorities, and we are instrumental in the investigations of events such as we saw just this past weekend. We also perform critical work combating human smuggling, trafficking, child exploitation, and we have a tremendous program in the HERO program, which involves wounded warriors who assist us in our child exploitation cases.

To address the challenges of jurisdictions which have lessened their cooperation with ICE over the years, we implemented last year the Priority Enforcement Program. We got the forms out and started this program last summer. We have had about a year under our belt, and we have conducted a nationwide effort to bring jurisdictions, which were not previously operating with our detainers, to do so. Over the past year, we have also increased our engagement with recalcitrant countries, and I will tell you I, personally, have sent 125 letters to foreign leaders.

I have met with the ambassadors of Guinea and China to work on resolution of some of these blocking points that we have in repatriating others to their country. Our people face, as you said, Chairman, a very tremendous challenge. We have people who enter the country and choose to do harm to others. We have ever-evolving, every day, our law from our immigration and Federal courts, changes one after the other; local law sometimes conflict with ours; recalcitrant countries; and then we have this tremendous influx of families and children, who are fleeing violent conditions in their own countries.

A lesser workforce would bend, maybe even break, but not at ICE. We continue to focus on these issues to try to get some resolution. With respect to the private detention issue, Ranking Member Conyers, if you should have questions for me, I am certainly happy to go into detail about that. You know, of course, that Secretary Johnson has asked his advisory committee to look at this issue with respect to our detention centers.

I will say, and I think I have visited with many people, I think I may have a date coming up for you, sir, about the specifics of

this, but we have apples and oranges in the Bureau of Prisons, a punitive system as opposed to our administrative, civil system we have at ICE.

Finally, I would like to say there are two legislative priorities that I will continue to push until the day they turn the lights off on me in January. One of them is an equitable pay, a reform system for our officers. They need to be paid, in terms of premium pay, equitably, as compared to other Federal employees.

This is a legislative priority for our agency. It is a legislative priority for me; same with respect to authorization. Mr. Chairman, I think I have mentioned this to you personally. ICE needs to be authorized. Thank you so much, and I look forward to your questions.

[The prepared statement of Ms. Saldaña follows:]



U.S. Immigration and Customs Enforcement

STATEMENT

OF

SARAH R. SALDAÑA

DIRECTOR

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

Regarding a Hearing on

"Oversight of U.S. Immigration and Customs Enforcement"

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY

SEPTEMBER 22, 2016 – 10:00 AM
2237 Rayburn House Office Building
Washington, D.C.

INTRODUCTION

Chairman Goodlatte, Ranking Member Conyers, and distinguished Members of the Committee, thank you for the opportunity to appear before you today. I welcome the opportunity to discuss where U.S. Immigration and Customs Enforcement (ICE) has made progress over the past year, what challenges still remain, and what we are doing to continue our efforts to carry out ICE's critical mission efficiently and effectively.

I am very proud to represent the dedicated men and women of ICE charged with investigating and enforcing a multitude of complex federal laws governing border control, customs, trade, and immigration. ICE has approximately 20,000 employees in all 50 states, the District of Columbia, three U.S. territories, and strategically stationed positions in 46 foreign countries. Without question, the work conducted by our staff is extraordinary. In fact, on an average day, the men and women of ICE contribute to the arrest of 4 human traffickers, 7 child predators, 279 criminal aliens, and the removal of 645 aliens. Each day, ICE initiates 8 new sensitive technology investigations, blocks 3,055 malware attacks, and forensically processes 17 terabytes of data. We manage more than 6,500 active legal cases on an average day, obtain 5 convictions for human smuggling, and complete 3 removal flights carrying dozens of individuals.

Given our young age as an agency, many Americans are still trying to understand all that ICE does to promote homeland security and protect our communities. Because of this, I have committed time and energy to increasing engagement – with the communities we serve, with the ICE employees who deserve to be recognized for their important work, and with Congress. Today I would like to discuss some of the important, but sometimes unrecognized, homeland security work ICE personnel perform, the areas where we have made progress, and what ICE needs to keep working on.

ENGAGEMENT AND OUTREACH

As Director, effective employee engagement is vital to ICE's success and a top priority for me. ICE could not carry out its homeland security mission without the hard work and talent of its 20,000 person workforce. My goal has been to ensure each of our employees has a voice, they are heard, mentored, feel empowered, are part of a larger team, and are recognized for their contributions our mission, agency, and country. That means listening and receiving input from the employees, and communicating our mission and priorities clearly. To date, I have visited 65 offices in 33 cities and 11 countries, with more planned over the next several months. More importantly, I believe these employee engagement efforts are helping, as there are indicators morale is improving.

Developing and maintaining collaborative partnerships with external stakeholders – state and local law enforcement agencies, elected officials and the Congress, professional groups, and non-governmental organizations – is equally important. It helps foster trust and increase understanding of ICE policies and programs. To that end, this past March, I announced efforts to hire more than two dozen community liaisons as part of an initiative aimed at increasing local community engagement across the country. These community relations officers – 14 of whom are on the job today – coordinate with state, local, and tribal law enforcement to identify

community challenges and explain partnership services that ICE can provide to meet those challenges, strengthen and build relationships with state and local elected officials so they are better able to understand ICE's mission and resources, and facilitate the resolution of complaints, inquiries, and referrals from a variety of internal and external stakeholders. The Office of Community Engagement will communicate ICE priorities to stakeholders and assess stakeholder needs, develop engagement measurement and reporting mechanisms, and coordinate with ICE's Offices of Public Affairs and Congressional Relations as the agency works on critical issues. I am confident that the thoughtful and regular engagement ICE undertakes with all of its external stakeholders will serve to better inform the public about the important work we do.

Over the past year ICE, with the Department of State (DOS) has, increased its engagement with foreign governments, particularly those nations that are recalcitrant in accepting their nationals ordered removed from the United States. Working with DOS, ICE has ramped up its efforts to improve the cooperation of recalcitrant countries. In addition, ICE is actively engaging to improve cooperation with regards to the removal process in an additional 62 countries. In April, May, and July 2016, I sent letters to DOS to explore additional options regarding cooperation from Guinea, Cuba, Liberia, China, Afghanistan, Mali, and the Gambia. ICE, along with DOS, has also been more active in meeting with foreign governments to try to improve cooperation. For example, on April 28, 2016, the Assistant Secretary for Consular Affairs, Michele Bond and I met with the Ambassador of Guinea to encourage Guinea to be more compliant with the issuance of travel documents. We also met with the Chinese Ambassador to the United States this past July. In August, I met with both the Salvadoran Ambassador to the United States and El Salvador's Foreign Minister to discuss delays in travel document issuance and met with Guatemala's president to pave a way forward for expansions to the repatriation reception center in Guatemala City.

Since December 2015, ICE has sent so-called Annex 9 letters—letters that draw attention to applicable standards promulgated by the International Civil Aviation Organization (ICAO) in Annex 9 to the Convention on International Civil Aviation regarding the issuance of replacement travel documents for nationals with final orders of removal, and that encourage ICAO member states to comply with those standards—in 151 cases, to 23 countries, including Gambia, China, Liberia, and El Salvador. While there is still work to be done in this area, ICE has made some progress recently. As of September 13, 2016, the Government of Somalia issued travel documents for the removal of approximately 150 Somali nationals and the Government of Liberia has issued travel documents for the removal of approximately 37 Liberian nationals. On August 18, 2016, ICE successfully executed a Special High Risk Charter flight to Guinea removing eight Guinean nationals. The charter to Guinea was the first to occur in recent years, and Guinean officials have expressed a willingness to sign a repatriation Memorandum of Understanding. This fiscal year, ICE has conducted 27 Special High Risk Charter flights, a record, which includes flights to 16 new countries due to continuing efforts to repatriate nationals.

KEY CRIMINAL INVESTIGATIVE OPERATIONS

Terrorism remains one of the most significant threats U.S. law enforcement faces in protecting the homeland. Homeland Security Investigations (HSI) is the second largest presence

of federal agents to the Federal Bureau of Investigation-led Joint Terrorism Task Forces (JTTFs), which benefit from our agents' investigative expertise and broad enforcement authorities. ICE will continue to participate in more than 100 JTTFs supporting and complementing counterterrorism investigations with ICE's unique immigration and trade-based authorities. Last year, 34 percent of the JTTF's disruptions of potential terrorist activity involved the use of ICE's unique law enforcement authorities.

Counterterrorism and criminal investigative efforts seek to prevent terrorists and other criminals, such as human rights violators, from exploiting the nation's immigration system. ICE's overstay analysis efforts provide timely, relevant, and credible information on entry, exit, and immigration overstay status of visitors to the United States in order to enhance security, to facilitate legitimate trade and travel, and to ensure the integrity of the immigration system, as well as to protect the privacy of visitors.

ICE maintains a robust international footprint to work with foreign counterparts to mitigate threats to public safety and national security through investigative activity, and expand our relationships worldwide. ICE's international relationships and operations serve a number of important functions beyond the repatriation of foreign nationals. ICE currently deploys approximately 250 Special Agents, 11 Deportation Officers, and 176 support staff to 62 offices in 46 countries.

There are hundreds of foreign law enforcement officers that comprise Transnational Criminal Investigative Units (TCIUs) and International Taskforce units. The TCIUs are vetted, U.S. trained at Federal Law Enforcement Training Centers, and multi-disciplinary units primarily comprised of foreign prosecutors and national/federal police. The teams also include foreign customs, immigration, and intelligence officials. TCIUs provide operational support to ICE personnel stationed overseas in support of domestic and international investigations and operations in compliance with host country laws, agreements, treaties, and U.S. mission policies. ICE provided training to TCIUs from Mexico, Colombia, Panama, El Salvador, Guatemala, the Dominican Republic and Honduras at the Federal Law Enforcement Training Center during Fiscal Year (FY) 2015.

In FY 2015, ICE trained a total of 618 foreign law enforcement personnel from Mexico, Guatemala, El Salvador, Honduras, and Panama in an effort to promote the rule of law and provide each country's law enforcement personnel additional capacity to combat organized smuggling. Further, *Operation Citadel* resulted in 210 criminal arrests, the rescue of 51 unaccompanied children, the seizure of \$2,078,988 from illicit currency movements, 2,133 biometric enrollments, and the initiation of 68 additional criminal investigations. Our efforts continued in 2016 with similar results. Crucial to the success of this ninety-day investigative operation was the interagency support provided by U.S. Customs and Border Protection (CBP); the U.S. Coast Guard; the U.S. Drug Enforcement Administration; and the Departments of Justice, Defense and State.

ICE strives to protect our nation's homeland security wherever threats confront us. One of our most important priorities is to detect and deter threats before they reach our nation's borders. The Homeland Security Act of 2002 authorizes the deployment of Department of

Homeland Security (DHS) officers to diplomatic posts to perform visa security activities and provide advice and training to DOS consular officers. This critical mission is accomplished by the Visa Security Program (VSP). VSP's primary purpose is to identify terrorists, criminals, and other individuals who are ineligible for visas prior to their travel or application for admission to the United States.

The visa adjudication process is often the first opportunity to assess whether a potential visitor or immigrant poses a threat to our country. Furthermore, the visa adjudication process is an ongoing and continuous vetting process that searches for derogatory information on applicants. No visa recipient is granted admittance based on a single review point.

Visa security is an important and collaborative function, shared by both DOS and DHS, including ICE, CBP, and U.S. Citizenship and Immigration Services (USCIS). Our components constantly seek to enhance our systems and processes to improve visa security efforts. Through the Pre-Adjudicated Threat Recognition Intelligence Operations Team (PATRIOT) initiative, we conduct automated screening of visa application information against DHS holdings, as well as holdings of other U.S. agencies, prior to the applicant's interview and visa adjudication. The process includes in-depth vetting of applicants identified as potentially having derogatory information who may be of investigative interest, or ineligible to receive U.S. visas. PATRIOT takes a risk-based approach and uses interagency resources from ICE, CBP, DOS, and the Intelligence Community to identify national security and public safety threats.

VSP differs from most other U.S. Government screening efforts in that it leverages its capabilities, such as in-person interviews and working collaboratively with U.S. agencies at post, to investigate suspect travelers, enhance existing information, and identify previously unknown threats instead of simply denying visas and any potential travel. We saw similar numbers in FY 2015 and FY 2016 where each year, VSP reviewed over two million visa applications, contributing input to approximately 8,600 cases in which visas were refused. Of these refusals, over 2,200 applicants per year had some known or suspected connection to terrorism or terrorist organizations.

In addition, VSP enhances visa vetting by increasing automated data exchange between DOS and the CBP National Targeting Center (NTC), which provides tactical targeting and analytical research to prevent terrorists from entering the United States. The flow of online visa information to DHS systems is now automated and information is sent back to DOS using an automated interface.

ICE also deploys personnel to the NTC to augment and expand current operations, and the co-location of personnel helps increase both communication and information sharing. The NTC conducts pre-departure vetting of all travelers on flights bound for the United States. This vetting identifies high-risk passengers who should be the subject of no-board recommendations to carriers, including those whose visas are later revoked.

Within VSP's international footprint, we deploy specially trained agents overseas to screen and vet visa applications at high-risk locations, augmenting vetting mechanisms in place worldwide in order to enhance efforts at these critical posts to identify potential terrorist and

criminal threats before they enter the United States. ICE accomplishes this crucial function by conducting targeted, in-depth reviews of individual visa applications and applicants prior to visa issuance, and making recommendations to consular officers to refuse or revoke visas when warranted. ICE actions complement the consular officers' screening, applicant interviews, and reviews of applications and supporting documentation. As a result of additional congressional funding, we expanded VSP operations in FY 2015 and are adding additional posts in FY 2016.

Additionally, DHS' role in the visa screening process does not end at the visa screening units. Rather, government screening efforts continue to examine visa holders before and during their authorized travel to the United States. For example, should a visa traveler match derogatory information within government holdings, DHS and DOS work collaboratively to determine if the information warrants DOS revocation of his/her visa regardless of whether the individual is outside or inside the United States, thereby denying him/her any further travel access to our country. DHS also strives to ensure that only authorized visitors are entering the country, and DHS components actively share with each other information gathered about admissibility indicators, intelligence records and additional information retrieved from travelers interviewed at secondary inspections stations at the ports of entry.

ICE also performs critical work combatting human smuggling, human trafficking, online child exploitation, and transnational criminal organizations (TCOs). Notably, in FY 2015, our investigations led to the disruption or dismantlement of approximately 239 TCOs. ICE made more than 33,000 criminal arrests, including more than 3,500 transnational gang members. ICE also seized more than 1.08 million pounds of narcotics, 1,479 seizures for violations of U.S. export laws and regulations, and nearly \$513 million in currency and monetary instruments. Additionally, ICE identified and assisted more than 2,300 crime victims, including 384 human trafficking victims and more than 1,000 child exploitation victims.

One of the top investigative priorities for ICE is human smuggling and trafficking, for which ICE possesses a full range of investigative and border-related authorities. Human smuggling is a transportation-based crime that violates the integrity of the border and the immigration system. Human trafficking, on the other hand, is a crime against a person involving the exploitation of an individual, and is often referred to as modern day slavery.

In response to the sudden influx of unaccompanied children in the summer of 2014, ICE initiated *Operation Coyote*, which was designed specifically to stem the flow of Central America illegal migration, including that of unaccompanied children, by targeting the human smuggling organizations that facilitate these illegal activities. We deployed personnel to strengthen capacity for conducting human smuggling investigations and enforcement actions, and to monitor international conditions to enable targeted responses to the influx.

To build upon its early investigative accomplishments, we expanded the initiative not only across the country, but worldwide, to harness all investigative activity related to the smuggling of Central Americans into the United States. On March 23, 2015, ICE commenced *Operation Coyote 2.0*, which further evolved and enhanced our overall human smuggling strategy. In FY 2015, the operation resulted in 837 criminal arrests, 706 indictments, and 618 convictions related to human smuggling investigations.

As part of our overarching efforts to combat human smuggling, ICE leads two interagency initiatives: the Human Smuggling Cell (HSC) and Operation Citadel. The HSC created an innovative model that synthesizes the four pillar disciplines of Investigation, Interdiction, Intelligence, and International Engagement from DHS component agencies in investigations involving criminal networks. The HSC harnesses DHS's unique access to immigration, border, and financial data to develop information on individuals or organizations involved in human smuggling. It also develops and distributes intelligence products on human smuggling.

In summer 2015, ICE led an interagency effort focused on human smuggling in Colombia, Panama, Guatemala, Honduras, and El Salvador under *Operation Citadel*. This operation, coordinated with TCIUs in the region, focused on partner nation capacity building and training with real-time intelligence, interdiction, and investigative operations at international seaports, airports, land borders, and other locations. *Operation Citadel's* operational and intelligence efforts supported our domestic investigations and the dismantlement of several large-scale transnational criminal organizations involved in human smuggling.

As part of ICE's ongoing human smuggling investigations work in South and Central America, this past July, *Operation Mesoamerica* culminated with the arrest of 41 individuals linked to TCOs. Evidence gathered during the investigation revealed that TCOs in Panama, Costa Rica, Honduras, and El Salvador worked to smuggle individuals from Asia, Africa, Europe and the Middle East through South and Central America. The multilateral operation demonstrated that the international community can work together in a united front against criminal networks involved in human smuggling.

While combatting human trafficking, ICE has fully committed to a victim-centered approach to its investigations in which the identification, rescue, and needs of the victims are equal in value to the apprehension and prosecution of traffickers. We investigate various forms of human trafficking, including sex trafficking, in which a commercial sex act is induced by force, fraud, or coercion, or in which the victim is a minor; and labor trafficking, in which the victim is forced or coerced into labor against his or her will.

ICE is committed to the DHS Blue Campaign; the Department's unified voice to combat human trafficking. Working in collaboration with law enforcement and non-governmental organizations, the Blue Campaign strives to protect victims of human trafficking and to bring those who exploit human lives to justice.

ICE is also dedicated to its efforts to combat child sexual exploitation. The Human Exploitation Rescue Operative (HERO) Corps is a program developed by ICE and U.S. Special Operations Command (SOCOM) in conjunction with the National Association to Protect Children (PROTECT). The HERO Corps program, which began in 2013, marked the first time ICE, PROTECT, and SOCOM joined forces to combat child sexual exploitation. The cooperative private-public partnership that has made the HERO Corps program such an enormous success is an example of inter-agency collaborative efforts. Partnerships are critical in the fight against child sexual abuse and exploitation and the identification and rescue of victims.

The HERO Corps is a program designed to train, equip and embed wounded, injured and ill military veterans into a one-year computer forensic internship within law enforcement offices around the country. HEROs attend three weeks of training provided by PROTECT and eight weeks of digital forensics and child exploitation investigation training at our Cyber Crimes Center (C3). Upon successful completion of both training courses, the HEROs are deployed to our field offices for the remaining 10 months of the internship program. To date, 115 individuals have entered the HERO Corps Program, four classes of graduates (a total of 64 students) have completed the entire process, and an additional class is scheduled for graduation on October 14, 2016.

The key to the success of the HERO program are the individual heroes: the military veterans who have been selected to serve in the HERO Corps have been tried, tested and proven as America's finest warriors, many of whom were wounded in the line of duty. In their military careers, these veterans were engaged in the critical mission of protecting and defending the nation. They've transformed that same level of dedication toward another critical mission—protecting and defending innocent children. These heroes align with ICE in one of our highest mission priorities—the pursuit and arrest of child sexual predators.

IMMIGRATION ENFORCEMENT PROGRESS AND CHALLENGES

ICE's nearly 6,000 Enforcement and Removal Operations (ERO) law enforcement officers promote national security, public safety, and border security by identifying, arresting, detaining, and removing individuals from the United States consistent with the following DHS enforcement priorities.

- Priority 1 includes those who pose a threat to national security, border security, or public safety (including recent border crossers and those convicted of felonies or aggravated felonies);
- Priority 2 includes those who have been convicted of significant or multiple misdemeanors, those who have significantly abused the visa or visa waiver programs, and those apprehended who unlawfully entered the United States after January 1, 2014; and
- Priority 3 focuses on those individuals who have been issued a final order of removal on or after January 1, 2014.

I remain firmly committed to enforcing our immigration laws effectively and sensibly. However, ICE's immigration enforcement efforts continue to face a number of significant challenges. As this committee knows well, ICE continues to respond to the continued trend of family units and unaccompanied children who are apprehended while attempting to illegally cross the Southwest Border into the United States. We continue to address this humanitarian and border security issue in a manner that is comprehensive, coordinated, and humane. While ICE is only one of several agencies involved in the processing of unaccompanied children and families pursuant to its statutory responsibilities, it plays a critical role by quickly and safely transporting unaccompanied children from CBP custody to the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), transporting families to ICE custody at

family residential centers, placing eligible adult family members on alternatives to detention, and effectuating removal orders as appropriate following the conclusion of immigration proceedings.

As the Committee is also aware, DHS has refined its immigration enforcement priorities to focus on the most serious public safety and national security threats as well as recent border crossers. The revised priorities have intensified ICE's focus on removing convicted criminals as well as other public safety threats, national security threats, and recent border entrants. ICE's FY 2015 removal statistics illustrate our commitment to ensure individuals who pose a threat to public safety are not released from ICE custody, and our review processes demonstrate ICE's commitment to public safety.

In FY 2015, increased removals of individuals who were convicted criminals by 3 percent over FY 2014. More specifically, of the total ICE removals in FY 2015, 86 percent (202,152) fell into Priority 1, which includes national security and public safety threats; 8 percent (18,536) fell into Priority 2, which includes individuals convicted of serious or multiple misdemeanors; and 4 percent (9,960) fell into Priority 3, or those aliens who received a final order of removal on or after January 1, 2014.

In FY 2015, ICE conducted 235,413 removals: 59 percent of all ICE removals, or 139,368, were previously convicted of a crime, and 98 percent of all ICE removals met one or more of ICE's stated civil immigration enforcement priorities. Of the 96,045 individuals removed who had no criminal conviction, 94 percent, or 90,106, were apprehended at or near U.S. borders or ports of entry. The leading countries of origin for removals were Mexico, Guatemala, Honduras, and El Salvador. While the FY 2016 end-of-year numbers are not yet available, I've seen a similar trend in FY 2016 for priority removals as we maintain our focus on meeting DHS enforcement priorities.

ICE promotes and implements ongoing national operations conducted including *Operation Cross Check*, which targets at-large criminals convicted of violent offenses, or members of transnational criminal gangs. *Operation Sex Offender Alien Removal* (SOAR) builds on ICE's ongoing efforts to target egregious criminal aliens convicted of sex offenses and remove them from communities. Targeted arrests of sex offenders are conducted as parts of SOAR surge operations, as well as part of our daily enforcement operations.

ICE remains committed to implementing safeguards to ensure that any releases from its custody—either mandated by case law or authorized by the Immigration and Nationality Act (INA)—are executed in a way that promotes public safety and protects our communities. As the Committee is aware, in March 2015, ICE instituted additional safeguards, including enhanced supervisory approval for discretionary releases of certain categories of criminal aliens. ICE created a panel of senior managers to review discretionary release decisions for individuals convicted of crimes of violence to ensure compliance with supervisory approval requirements. In February 2016, ICE also signed a Memorandum of Understanding (MOU) with the Department of Justice (DOJ) Bureau of Prisons (BOP) regarding the transfer of criminal aliens from BOP custody. The MOU provides ICE with priority to make custody decisions, when both ICE and a state or local jurisdiction have lodged a detainer. Finally, ICE is committed to ensuring detention capacity is not used as a determinative factor in the release of an individual

with a serious criminal record. ICE will continue to manage its nationwide detention system to ensure that field offices have access to sufficient beds to detain individuals posing a public safety threat until removal.

One example of ICE's commitment to enforcing immigration law in a way that prioritizes public safety is the Law Enforcement Notification System (LENS). LENS promotes transparency and maximizes public safety through electronic message transmission to state law enforcement partners, for appropriate distribution to local law enforcement agencies, regarding subjects being released from ICE custody who have been convicted of sex offenses or violent crimes. ICE completed nationwide deployment of LENS in September 2015 and completed deployment of a second generation LENS system in August 2016 allowing local law enforcement agencies to directly subscribe to the system without interfacing with a state-level agency.

A significant factor continuing to impact ICE operations has been the number of state and local law enforcement jurisdictions limiting or declining cooperation with ICE. Secure Communities drew criticism from communities, was widely misunderstood, and became embroiled in litigation. Many counties and cities across the country stopped holding individuals on immigration detainers to avoid potential liability. When state or local law enforcement agencies decline to securely transfer removable convicted criminals or public safety threats to ICE custody, the agency must expend additional resources to attempt to identify, locate, and arrest these individuals at-large. Not only does this create a time period in which the dangerous individual is not in custody, thereby putting the public at risk, but it is also a significantly more resource intensive and dangerous way to do business for my deportation officers.

To address these problems, the Department created the Priority Enforcement Program (PEP). Our objective with PEP is to focus on convicted criminals and other priority aliens who pose a threat to public safety—including felons, significant/repeat misdemeanants, and criminal gang participants—by working with state and local law enforcement to take custody of these dangerous individuals before they are released into the community. ICE is committed to working with all jurisdictions that are interested in partnering with us. In cooperative jurisdictions, ICE can also facilitate the transfer of priority aliens whose records fall outside the specific parameters of PEP, and whose removal would serve an important federal interest.

For the past year, DHS, through ICE, conducted a nationwide effort to implement PEP and promote collaboration by reaching out to thousands of local law enforcement agencies and government officials. The agency's Field Office Directors have provided briefings about the program to more than 2,000 law enforcement jurisdictions. Notably, most of the top 25 jurisdictions in terms of previously declined detainers have now agreed to participate in PEP by accepting ICE requests for notifications and detainers.

As ICE continues to strengthen and improve relationships with state and local law enforcement partners, we remain hopeful that more of our law enforcement partners will join us and participate in PEP, keeping our communities safer and decreasing the risk to both communities and ICE officers who would otherwise need to locate these individuals at-large.

I would also like to highlight our continued efforts in locating and arresting priority aliens in non-custodial settings. Each and every day, deportation officers seek and arrest criminal aliens and other enforcement priorities. Our officers continue to accomplish their mission with accuracy, consistency, and professionalism. Recently, in accordance with a congressional appropriation, we established 10 Mobile Criminal Alien Teams (MCATs) in ICE field offices to augment Fugitive Operations teams. The MCATs will conduct targeted, at-large field enforcement activities designed to investigate, locate, and arrest priority aliens for removal from the United States. One key responsibility of these teams is to locate and arrest convicted criminals who were released because detainers or requests for notification were not honored. ICE also created the “Fugitive Alien Removal (FAR)” program, which encompasses ICE’s efforts to identify, locate and arrest foreign fugitives—removable aliens wanted for, or convicted of, crimes committed abroad, including murder, kidnapping and rape—who are at-large within the United States.

While we have made significant progress in the last year, a number of other factors have also affected ICE’s ability to efficiently and effectively remove priority aliens.

Changing demographics have significantly impacted our removal operations. As unauthorized border entries by Mexican nationals continue to decrease, those by Central Americans—especially unaccompanied children and family units—have increased. In general, more time, personnel, and resources are required to complete the removal process for nationals from Central America and other non-contiguous countries when compared to Mexican nationals apprehended at the border. This is because removals of non-Mexican nationals usually require ICE to use additional detention capacity, expend more time and effort to secure travel documents from the host country, and arrange air transportation to remove these individuals to their country of origin. Additionally, many Central American nationals are seeking protection as asylees fleeing persecution. Such cases require careful adjudication by USCIS in order to ensure that individuals are given an opportunity to seek humanitarian relief if they are eligible. Of course, these cases take longer to process.

As Secretary Johnson and I have repeatedly said, we will enforce the law consistent with our priorities, values, and basic principles of decency, fairness, and humanity. However, it is important to make clear that our borders are not open to unauthorized migration. Once an individual receives a final order of removal and has exhausted all his/her legal remedies for relief, detention is an important tool in effectuating timely removals.

As I noted earlier, the removal process is also impacted by the level of cooperation offered by our foreign partners. As the Committee is aware, in order for ICE to effectuate a removal, two things are generally required: (1) a final order of removal or grant of voluntary departure, and (2) a travel document issued by a foreign government. Although the majority of countries accept the timely return of their citizens, ICE suffers from unique challenges with countries that are recalcitrant regarding the repatriation of their nationals. ICE works with the Department of State to consistently engage government officials in these countries when feasible. Additionally, the decision of the U.S. Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), creates challenges in the removal process for individuals from these countries. Pursuant to *Zadvydas*, ICE has the authority to detain individuals subject to a final order of

removal for 180 days from the date the removal period begins. Generally speaking, after 180 days, continued detention of those with final orders of removal is permitted only when removal is significantly likely in the reasonably foreseeable future, with very limited exceptions that are the subject of litigation.

ICE considers 23 countries to be recalcitrant, including Afghanistan, Algeria, the People's Republic of China, Cuba, the Gambia, Iran, Iraq, Libya, Somalia, and Zimbabwe. As a result of their lack of cooperation, ICE has experienced significant hindrance in its ability to remove aliens from these countries. ICE is also closely monitoring an additional 62 countries with strained cooperation, but which are not deemed recalcitrant at this time. Due to challenges regarding the repatriation of nationals from these countries, ICE has been compelled by law to release thousands of aliens, including some with criminal convictions.

Due to the threat continued recalcitrance poses to its ability to successfully carry out its mission, DHS as a whole, and ICE specifically, takes very seriously its sustained efforts to remove foreign nationals in a timely and efficient manner. As a result, we work both directly with foreign governments and through DOS to improve cooperation with countries with whom we have encountered challenges regarding the repatriation of their nationals.

ICE's interior enforcement and removal operations also face difficulties as a result of a number of federal court rulings, most notably *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013). *Rodriguez* applies throughout the Ninth Circuit, which has the largest number of individuals in removal proceedings of any federal circuit. The ruling allows individuals who previously would have been detained without bond under the INA, including criminal aliens, to seek release on bond from immigration judges after six months' detention. This ruling poses significant public safety concerns. Of the 533 aliens released pursuant to *Rodriguez* in the ICE Los Angeles Area of Responsibility from October 2012 through December 2013, ICE records indicate that 195 (approximately 37 percent) have been subsequently re-arrested by other law enforcement agencies, for a total of 471 crimes as of August 15, 2016. Crimes for which the aliens were arrested range from drug and theft offenses to violent crimes like murder, rape, child cruelty and spousal abuse. The Supreme Court granted certiorari on June 20, 2016. The Government filed its opening brief on August 26, 2016.

Recently, the U.S. Court of Appeals for the Second Circuit has followed the lead of the Ninth Circuit in *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. Oct. 28, 2015), which provides bond hearings after six months for those detained under the mandatory detention provision of the INA. If a bond is granted and an individual is released from detention, their case is then transferred from the relatively expedited detained court docket to the non-detained court docket, where cases generally take much longer to litigate.

ICE USE OF PRIVATE DETENTION FACILITIES

Following a recent announcement by DOJ that it would reduce the Bureau of Prisons' (BOP) dependence on private correctional facilities as contract terms end, questions have been asked whether DHS and ICE should continue to utilize private detention operators. Secretary Johnson recently announced the formation of a Homeland Security Advisory Council (HSAC)

subcommittee to evaluate whether ICE should move away from private detention facilities. The subcommittee will review and consider all factors, including current policies, practices, and fiscal requirements, and any relevant differences between the needs of DOJ and ICE.

The Secretary has asked the subcommittee to provide a written report by November 30, 2016. ICE looks forward to the results of this evaluation, and to any findings or recommendations the Council may make.

WORKING WITH CONGRESS

Since the agency's establishment in 2003, ICE has experienced substantial growth and evolution in its mission. For example, our enforcement strategy has shifted heavily towards the investigation, identification, location, arrest, prosecution, and removal of aliens who present a danger to national security or threaten public safety. We must ensure our employees are adequately and equitably compensated for the work they perform, and that ICE has the flexibility to cover unforeseen operational requirements and to assign both scheduled and unscheduled work to meet our needs. Pursuant to Secretary Johnson's November 20, 2014 Executive Action memo, *Personnel Reform for Immigration and Customs Enforcement Officers*, ICE has reviewed its pay structures and is currently working towards an equitable pay system for its law enforcement employees. I would welcome this Committee's future support for this DHS legislative priority.

CONCLUSION

ICE will continue to play a critical role in fulfilling DHS's national security, border security, and public safety mission. Thank you again for the opportunity to testify today and for your continued support of ICE and its employees. I look forward to your questions.

Mr. GOODLATTE. Thank you, Director. We will now proceed under the 5-minute rule with questions, and I will begin by recognizing myself. A report by the GAO last year found that immigration judges have granted asylum to 3,709 aliens whose asylum claims were prepared by others who were convicted of immigration fraud. Many of the aliens were involved in the fraud, and investigators stated that most of the aliens had not suffered persecution. None of those cases have been reopened, according to the Department of Justice. What action have you taken to investigate these cases?

Ms. SALDAÑA. Are you talking about the IG's enforcement [inaudible]?

Mr. GOODLATTE. No, I am talking about a report by the General Accounting Office about aliens who made asylum claims and were assisted in making those claims by individuals who were convicted of immigration fraud.

Ms. SALDAÑA. Yes, obviously fraud is an area that we are [inaudible]. I will tell you, Chairman, that both the Office of General Counsel and Homeland Security and our almost 900-plus attorneys within Immigrations and Customs Enforcement—

Mr. CONYERS. Pull your mic up a little closer, please.

Mr. GOODLATTE. Turn it on.

Ms. SALDAÑA [continuing]. Have had a tremendous—thank you, sir. I have focused their efforts on detection of fraud, and we will obviously focus on these 3,000, in particular. We believe that—

Mr. GOODLATTE. My question was, what action have you taken to investigate those cases?

Ms. SALDAÑA. In those cases that we have reviewed, we have opened matters in order to take a look at them and see the facts and circumstances of each case. We will look at each one of those.

Mr. GOODLATTE. Have you instructed your ICE attorneys to review those cases and file motions to reopen those where fraud is suspected?

Ms. SALDAÑA. Those, sir, and every other, because there are more than those, in which we believe there may be a fraud aspect that were parts of ongoing investigations.

Mr. GOODLATTE. If your answer is yes, then in how many of how those cases were motions filed? There are 3,709 cases. In how many of those have your ICE attorneys filed motions to revoke or bring into question whether those grants of asylum were legitimate?

Ms. SALDAÑA. I do not have that number directly in front of me, but I certainly can get that to you promptly.

Mr. GOODLATTE. How quickly can you get it to us?

Ms. SALDAÑA. Tomorrow?

Mr. GOODLATTE. That would be wonderful. Have any of the asylum grants been rescinded by a judge? Add that to your list of questions. On August 29, Secretary Johnson directed the Homeland Security Advisory Council to evaluate whether ICE's private detention operation should continue. Would not ending the use of such facilities adversely impact ICE's ability to detain removable aliens, including criminals?

Ms. SALDAÑA. It would pretty much turn our system upside down, sir, because we are almost completely contractor-run, with

respect to our detention facilities. We would have to build detention centers. We would have to hire staff.

Mr. GOODLATTE. Or, conversely, would you not be forced to release criminal aliens that would otherwise be detained?

Ms. SALDAÑA. We will not be releasing any criminal aliens. We have been directed specifically by the Secretary that we cannot do that.

Mr. GOODLATTE. Congress has mandated that ICE maintain at least 34,000 detention beds. Could you meet that statutory mandate without private detention facilities?

Ms. SALDAÑA. No.

Mr. GOODLATTE. And last year you told the Committee that ICE released over 30,000 in fiscal year 2014, who had a total of 79,059 criminal convictions. Later, we learned that we now have more than 92,000 convictions, 13,000 more than originally reported. ICE was aware of this larger number before your testimony last April, April of 2015. Why was it not reported to the Committee that the number was higher then?

Ms. SALDAÑA. In April, sir?

Mr. GOODLATTE. Yes.

Ms. SALDAÑA. Chairman, I saw your letter regarding this inquiry, and I take very seriously these concerns you have. Let me urge you to consider we cannot press a button for data to be spewed out, particularly with respect to this criminal release data you wanted, that says, as of March 23rd, 2014, these are the number of criminal convictions that apply to releases that we have had. It is not a pressing of the button. The information we provided you was as of March 23, 2015, and that number could very well and does, as you know now, increase when you run the data again because, in the interim, there may be additional convictions. What we did—

Mr. GOODLATTE. Let me ask you this then. Has ICE rearrested any of these aliens?

Ms. SALDAÑA. I have to believe so. Yes, but I cannot give you a number right now, Chairman.

Mr. GOODLATTE. How soon could you give us a number?

Ms. SALDAÑA. That I will have to go back and see. These are essentially manual searches when we do something like that on a special inquiry like this.

Mr. GOODLATTE. ICE data shows that one or more aliens with terrorism convictions were released from ICE custody in fiscal year 2015 under the Supreme Court's Zadvydas decision. What action did you take in those cases to recommend that Secretary Johnson send notice to the State Department to invoke visa sanctions against those recalcitrant countries under INA Section 243D?

In other words, you released people because of that Supreme Court decision onto our streets. It is almost always because other countries have refused to take back people that we have attempted to deport, but we have a process whereby visa sanctions can be imposed on those countries. Did Secretary Johnson send notice to the Department of State to invoke visa sanctions against any of the recalcitrant countries that refused to take back individuals, particularly individuals who were released who have terrorism convictions, of all things? What is being done to make sure that the ter-

rorists in our custody that should be deported, are indeed, deported to their home country?

Ms. SALDAÑA. Even when we are required to release, Chairman, people with criminal records, including concerns about terrorism under the Zadvydas decision, we do not just put them on the street. We do release them, because we are required to, under conditions: reporting conditions, perhaps even a monitor. With respect to the visa sanctions issue, I am not aware of that having been exercised once to date, although I know that the Secretary has under consideration doing so, with respect to one or more of these countries.

Mr. GOODLATTE. I have seen no evidence that he has done that, and there are provisions that authorize mandatory detention for terrorist aliens in the Immigration and Nationality Act, Section 236A, and 8 Code of Federal Regulations 24114. What actions did you take, or the Secretary take, to invoke those provisions to maintain custody of those terrorists?

Ms. SALDAÑA. We have at least done so in one case. We do not release someone who we have the ability to detain under the mandatory detention provisions. I will assure you that.

Mr. GOODLATTE. But to your knowledge, Secretary Johnson has never sent a notice to the Department of State to invoke visa sanctions against any country that refuses to take back their own citizens who are required, by our laws, to be sent out of this country?

Ms. SALDAÑA. Sir, he has done so once that I am aware of. I do not know that we have heard from the Department of State.

Mr. GOODLATTE. How recently was that?

Ms. SALDAÑA. Well, I know he had it under consideration. It has been whispered in my ear that that letter may not have gone out yet, but I know he is at least considering it seriously in respect to—remind me of the country.

VOICE. Gambia.

Ms. SALDAÑA. Gambia.

Mr. GOODLATTE. Well, we are into the last months of this Presidency and the last months of the Secretary's service. This problem is not a new one. It has been going on preceding this Administration. Do not you think it is time that the Administration stepped up and started enforcing our laws with regard to countries that do not cooperate with us?

Ms. SALDAÑA. I know that the Secretary takes that very seriously, and as I say, he is taking under consideration this, in particular with this one country. There well may be more.

Mr. GOODLATTE. My time is expired. The Chair recognizes the gentleman from Michigan, Mr. Conyers, for his questions.

Mr. CONYERS. Thank you, Chairman. Thank you for being here today. I want to talk about the increase in Haitians entering the United States through the southwest border. As a result, the Department of Homeland Security announced today a change in policy toward Haitian asylum seekers entering the country at the southern border, and all Haitians, not just those convicted of serious crimes or posing a national security threat, will be subject to removal.

I understand that, to accomplish this at the southwest border, Haitians will be detained and placed in expedited removal proceedings, whereas previously, they were granted parole. What

guarantees do we have that, in the aftermath of the earthquake and cholera epidemics, the Haitian Government will issue travel documents for significantly increased numbers of Haitian removals?

Ms. SALDAÑA. We are in conversation with the Haitian officials. The Secretary did announce that change today, but let me assure you, Mr. Conyers, that Haitians are not going to be treated any differently from anyone else. If they have an asylum, a fear, asylum claim, or claim to be a refugee, we will consider those claims, along with everything else.

I think you know that, right now, the emergency situation that I am aware of is actually on a California border with some 4,000 Haitians there. I just was in the Central American region and heard from a number of those countries, El Salvador, Honduras, and Guatemala, that they are aware of, with their communications with their fellow governments in South and Central America, of 40,000 Haitians who are en route to the United States.

This is why the Secretary made a decision, based on facts that he has reviewed, that the conditions in Haiti at least are improved enough for us to change the policy back to treating Haitians just like everyone else, and that includes affording them the rights and privileges that our system provides refugees and asylees.

Mr. CONYERS. Well, that is encouraging. Let me turn now to the November 2014 priorities memo directed to the Department of Homeland Security agents and officers to prioritize the immigration enforcement of individuals with serious criminal offenses. Can you talk to us about ICE's efforts to locate, detain, and deport individuals with a criminal history?

Ms. SALDAÑA. Yes, sir, I am happy to. Obviously one of those other things that we are focused on, who out there, fugitive-wise, do we need to focus on as a priority, because we cannot get to everybody, but as a priority, to focus on those folks who are out in the community that we know need to be apprehended and returned to their countries?

We have a very strong unit that works on only fugitives. They review records. They prioritize those fugitives based on the nature of their crimes, how long ago their crimes occurred, and they are out there, on a constant and daily basis, in the early hours of the morning, trying to find folks where we have at least information on where we can encounter them and take them back.

We have had quite a bit of success in that regard, and we also have operations that occur on a focused basis, like Operation Border Resolve earlier this year, where we are trying to locate those folks that are fugitives and have escaped our system, and we need to get them back.

Mr. CONYERS. Let me tell you that we have a number of other questions that I am going to send you, and you can respond in writing, and we will incorporate them in the record.

Ms. SALDAÑA. Yes, sir.

Mr. CONYERS. I think that would be the easiest way, with me with only 15 seconds left, to begin this discussion. I think we need to become more familiar with the details of the strategies that you are using, and I want to encourage you to help us locate and detain and deport those individuals with a criminal history.

Ms. SALDAÑA. Yes, sir. Again, one of the Secretary's priorities, and we are doing that.

Mr. CONYERS. All right. Thank you, Mr. Chairman.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentleman from Texas, Mr. Smith, for 5 minutes.

Mr. SMITH. Mr. Chairman, I am going to use my question time to make a statement because, after 8 years of asking Obama administration officials why they refuse to enforce their immigration laws, I am confident that the Committee still will not receive satisfactory answers today. The President's immigration policies continue to put innocent Americans at risk. The Administration has ignored laws, failed to enforce laws, undermined laws, and unconstitutionally changed immigration laws.

Among these dangerous policies is the President's unconstitutional Executive Amnesty, which requires Immigration and Customs Enforcement officials to release criminal immigrants into our neighborhoods where, inevitably, they commit additional crimes. Over the last 3 years, ICE has released 86,000 criminal immigrants into our communities. They have been convicted of over 230,000 crimes, which include homicide, aggravated assault, sexual assault, kidnapping, driving under the influence, and other serious crimes. Over 30 percent will be arrested again for killing or injuring more innocent Americans.

The Administration's intentional release of criminal immigrants amounts to the largest jailbreak in American history, and everyday Americans across the country are paying a steep price. Last year, ICE deported a total of 235,000 illegal immigrants, the lowest number in 10 years. This was only 2 percent of the 11 million illegal immigrants in the country, and of these, only about 70,000 were interior removals. Under the current Administration, ICE has started counting turn-backs at the border as traditional interior removals in an attempt to pad their deportation figures.

Previous Presidents did not count turn backs as deportations, but then no President has done so little to enforce immigration laws. Investigation of immigrants who overstay their visas has disappeared. At least 40 percent of more than the 11 million illegal immigrants in the country entered legally and overstayed their visas, yet ICE only deported 2,456 visa over stayers in 2015. This is less than one-tenth of 1 percent of the total number of visa over stayers.

In addition, the Administration has done nothing to hold any of the 300 sanctuary cities accountable. These local governments violate Federal law when they refuse to cooperate with Federal immigration authorities in the apprehension and deportation of illegal immigrants. Congress mandated the cooperation of local officials in an immigration enforcement bill in 1996. I know. I wrote the law.

Tragically, the number of sanctuary cities has exploded under the Obama administration. During testimony at our last oversight hearing, Director Saldaña could not name a single instance in which ICE tried to prevent a jurisdiction from becoming a sanctuary for criminal immigrants. The lawlessness of these sanctuary jurisdictions has had disastrous consequences.

Last year Juan Francisco Lopez Sanchez, a five-time deported career felon, shot and killed Katherine Steinle. Lopez Sanchez was

set free to prey on innocent Americans like Ms. Steinle because of San Francisco's sanctuary law. Unfortunately, similar tragedies have occurred across the country as a result of these laws, so add these casualties to the current list of Americans who have become victims because of President Obama's immigration policies. These facts and figures demonstrate that enforcement of our immigration laws runs contrary to the Obama administration's Amnesty Agenda. Until the immigration policies of this Administration are overturned, illegal immigrants will continue to victimize innocent Americans. Mr. Chairman, I have a minute remaining, and I will yield that back to you for questions.

Mr. GOODLATTE. The Chair thanks the gentleman. Director, I want to follow up on the statement that Mr. Smith made and put it in the context of what Mr. Conyers observed, and that is that your organization operates with limited resources, and yet, in fiscal year 2015, you gave back to the Department of Homeland Security \$113 million in funds that were specifically appropriated for detention and removal. Why did you give this money back, given the problems that were just cited by Mr. Smith and the fact, as Mr. Conyers noted, you have limited resources to begin with?

Ms. SALDAÑA. Absolutely, sir. This whole issue of how we manage funds for specific categories, in this case, beds, that is extremely important to me and to our folks in the enforcement and removal area, as it is, obviously, to you. It is very difficult for us to anticipate the number of people coming across the border from 1 year to the next. It goes up, and it goes down even over the course of—

Mr. GOODLATTE. I understand that, but Mr. Smith noted that there are over 250,000 individuals in this country who are not lawfully present in the country and have committed crimes in the country, so that number continues to rise, and therefore, while it may be difficult to predict how many people are coming across the border, it is not difficult to know that you have got 250,000 that are already here who should not be there, and therefore, should be, until they are deported, in detention facilities or using resources to detain them and then remove them.

Ms. SALDAÑA. And we are, sir. That is exactly what we are trying to do. This enforcement priority approach that you have—you and I disagree on as to its wisdom—focuses not on the release of criminal aliens, but on the apprehension and removal of criminal aliens. Our statistics alone, with respect to the beds, those are filled by people with one or more convictions that we are preparing to remove from the country.

I think the last number I saw was something like 84 percent fit into our top priority, so we manage these beds as best as we can. Last year, we had some beds that were not filled. This year, we have the opposite problem. We have more people in beds than we can afford, but we are working very hard to manage that problem through the end of the fiscal year.

Mr. GOODLATTE. I would recommend that, when you have limited resources, and you have a huge problem that is not addressed, you not return money back that could be used to keep Americans safer than they are right now. At this time it is my pleasure to recognize the gentlewoman from California, Ms. Lofgren, for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman. This hearing, as we know, comes just days after the bombing and attempted bombing in New York and New Jersey. The alleged perpetrator, Ahmad Khan Rahami, has, we are very thankful, been arrested. The law enforcement investigation is ongoing, and I know that you cannot comment on that because it is an ongoing investigation. I would note that there is a classified briefing for Members of Congress this afternoon. I certainly intend to attend that, but I just think it is important to say what the case is and the facts that are currently known.

It is clear that the facts, as we know them, indicate this is a case about terrorism, radicalization, national intelligence, law enforcement, but it cannot be about immigration vetting because Ahmad Khan Rahami came to the United States as a child, and how you would vet a 7-year-old, it just does not make any sense. He came. His father was a small businessman. In fact, his father contacted the FBI 2 years ago to express concern about his son, and I hope to find out, in the classified briefing, why the FBI kind of blew that off, but we will find out.

I hope that people around America will not conflate that situation with the Syrian refugee situation that is unfolding. We know that DHS has a dedicated office to counter violent extremism, and I hope to hear more about your efforts in that regard as time goes on, but I would just note, you know, looking at the record of refugees from Afghanistan, there were virtually no refugees from Afghanistan until 1980 in the United States, and refugees came into the United States at about 2,000 to 4,000 a year until 1990.

It is interesting, going back to the record, there was a congressional task force on Afghanistan. Some of our colleagues, Dana Rohrabacher, who I serve on the Science Committee with, was a Member of that Committee; and former Members like Don Ritter, a Republican from Pennsylvania; and Lagomarsino, a Republican from California, were on that. It was a bi-partisan Committee.

Charlie Wilson was on that, and one of the things that they said was that the United States had a moral obligation to the people of Afghanistan because of the pivotal role they had played in defeating the Red Army at a time when Communism was on the march around the globe, so I think, as we look at this situation and this individual who came to the U.S. as a little boy, it is important to remember that the refugees were admitted as part of the fight against Communism at that time.

Now, I want to turn a little bit to detention in ICE. I have mentioned in the past my concern about for-profit, private detention facilities. I am glad that the Department is looking at that. I realize the change cannot happen overnight, but I do believe that, for the same reasons, the Department of Justice has decided to go in a different direction, namely that private facilities are more expensive; they are less accountable; they fail to meet constitutional standards. I am hopeful that we will be in a position to move in a different direction in ICE, just as the DOJ has, after that report is received in a few months.

Having said that, I continue to be concerned about the situation of women and children in custody. We know that mothers and children have been on a hunger strike at the facility at Burkes, and

I am concerned and wondering why we could not provide a monitored release for those women and their children.

Obviously, these are individuals who are appealing an adverse decision. They are in a different posture than the women and children in the Texas facilities, and yet some of those little children have been essentially been in jail for over a year. You know 5-, 6-year-old kids. That really is not in keeping with American standards, and I am wondering, Director, if it is possible to take a look at, what forms of accountability, whether it is bond, whether it is ankle monitoring, whether it is placement in a facility that is more home-like and less traumatizing for children, could be looked at for this population of mothers and children?

Ms. SALDAÑA. Congresswoman, I share your concern. This is not the business we were in not that long ago. We were not in the business of family and children. This is a phenomenon that has increased over the years as problems have occurred south of our borders, but I do take very seriously how long we detain families.

As you know, the average length of stay is now in the teens, with respect to our family facilities overall. I am familiar with the cases that you are referring to with respect to longer-term detentions. I will say that, while I cannot comment on a specific case, I am happy to cover that with you to the extent that we can and are allowed to, especially where we have a waiver of privacy, but generally speaking, the folks we are talking about are subject to mandatory detention outlined here in this statute, and when they are losing their appeals and we are preparing to remove them, we do not detain them for the purposes of punishing them—

Ms. LOFGREN. No, I understand that. I will follow up with you off agenda because there are provisions in the law that would allow them to be held in an accountable fashion. I want to turn now, since I do not have a lot of time left, to the issue of solitary confinement in civil immigration proceedings. We have had a lot of information about the use of solitary confinement in America, I mean, whether it is in criminal detention, or juvenile detention, and unfortunately, in civil detentions. Solitary confinement does tremendous damage to people.

The psychologists tell us it can actually make a person mentally ill, to be in solitary confinement for an extended period of time. Now, I have come across cases, and we have been in communication with your department, about the use of solitary confinement for young people that seem frivolous to me and, in fact, have been changed. I understand the President has directed departments to end their practice of restrictive housing, and the Department was required to submit to the White House, by September 1st, a report on the use of solitary confinement. Do you know when that report will be made public?

Ms. SALDAÑA. I think it will be any day now. I do not know exactly where it is, but I have been advised, and we have kept track of—I think it will maybe even be early next week, before week's end next week. That is my best estimate right now.

Ms. LOFGREN. All right. I have many other questions, but I see, Mr. Chairman, that my time has expired, and so I will yield back.

Mr. GOODLATTE. The Chair thanks the gentlewoman and recognizes the gentleman from Iowa, Mr. King, for 5 minutes.

Mr. KING. Thank you, Mr. Chairman. Mr. Chairman, I appreciate this hearing and statement and opening remarks, and I would like to associate myself this morning, especially, with that of Mr. Smith from Texas because I think it is important, in that we have been at this for almost 8 years, and the numbers do not look as discouraging, perhaps, as they did a year ago, but there is not hope on the horizon either.

And I look at the numbers that Mr. Smith has rolled out, and I did not hear them disputed, but 86,000 criminal aliens released onto our streets, and I think of the years that we worked this, and I remember testimony that came here before this Committee for years and shortly after I first arrived in this Congress, and it would be the testimony of how many people died in the desert trying to get into America. Do you have any of that data in your memory to give us an idea, a scope of how many died in the desert trying to get into America?

Ms. SALDAÑA. Oh my goodness, sir. I have heard of those tragedies, but I do not have that at my fingertips.

Mr. KING. Well, I remember the witnesses that came in and testified, and we saw numbers, just the Arizona Desert, in those years, that would say 200, 250. Then the next year, it went up. We saw numbers that went over 400 a year just in the Arizona Desert. Brooks County, Texas has a lot as well, and I began to think about that, and I began to think about how many Americans died at the hands of those who made it through, and we have done at least two GAO studies on that in my time here in this Congress. Apples to apples is a hard thing to arrive at.

It is very difficult to unravel this, but I have met a number of the people, and it is heartbreaking to me to think of the many people who are suffering a loss of a loved one because we did not enforce the law, and when I look through this list of those that have been released by ICE, and I see, in this particular list I looked at a little bit ago, a 101 released who had committed homicide, and how many others along the way?

What is the price to Americans? And so I recall Donald Trump highlighting some of the people in his statement before the convention in Cleveland, and I noticed that, last week, he made a statement that there are thousands of Americans that are grieving because they have lost a loved one at the hands of someone, whom had been encountered by law enforcement in America, including ICE, and been released onto our streets. Would you agree with that statement?

Ms. SALDAÑA. That there are thousands?

Mr. KING. Yes, thousands of people who are suffering the loss of a loved one.

Ms. SALDAÑA. I do not have the exact number, but I do not disagree with you, sir. And if I may, Congressman, let me tell you, I am a prosecutor. I come to this job as a prosecutor. I am used to trying to keep the community safe, and I have not discontinued that in this job. I am trying to make the most of out of the money we have. I told you earlier that 84 percent of people—

Mr. KING. I am sorry to interrupt, but the clock is ticking on me, and I do not dispute what you have said, but you have to get your orders from on high, and so if this is a matter of conscience, then

I would ask you now, have you come before this Congress and told us what you needed for resources in order to enforce the law fully 100 percent? What do you need for officers? What do you need for prosecutors? What do you need for judges? What do you need for prison beds?

I have never seen this Administration say we want to enforce 100 percent of the law. The signal we get looking at this data is that this President has given orders on high to release these criminals onto the streets of America, and if that is egregious to you, why have we not heard you push back against the President? And why have we not heard that request?

Ms. SALDAÑA. I will have to push back against the facts that you are asserting, sir. I really have tried to make this clear, but there is no discretion in these releases other than for about one-third of the number you are talking about, so when we continue to repeat that the Administration is releasing people willy-nilly out on the streets who have criminal records—we have talked about the Zadvydas; that is the United Supreme Court. That is not ICE.

Mr. KING. It is going to take a lot longer to get down into this than we actually have here, but I would like to ask you, do you recognize these names? Sarah Root.

Ms. SALDAÑA. I do.

Mr. KING. Brandon Mendoza.

Ms. SALDAÑA. I do.

Mr. KING. Dominic Durden.

Ms. SALDAÑA. Yes.

Mr. KING. Jazz Shaw.

Ms. SALDAÑA. Yes.

Mr. KING. His father, Jamiel.

Ms. SALDAÑA. Yes.

Mr. KING. Tessa Tranchant. Tessa Tranchant and Allie Kunhardt.

Ms. SALDAÑA. Yes, I do.

Mr. KING. I am glad that you do. I am thankful that you do, and we need to remember them. The immigration laws that we have are here to be enforced. If we have to lay out the standard that it is going to be 100 percent, if we have to put the resources out there to do that, this Congress, I believe, and the next Congress will be prepared to do that.

We need to restore the respect for the rule of law. Americans are dying every single day because of our failure to do so and because of turning people loose on the streets that do not return back again, and I see face after face of grieving Americans. They are in the thousands over the time that I have watched this tragedy, and I am glad that you are aware, and you recognize these names, and I appreciate the personal part of this, but we need a fresh start on this immigration law in this country. Thank you very much. I yield back.

Mr. GOODLATTE. Thank you, Mr. King. Director Saldaña, before I recognize the gentlewoman from Texas, I am sure you know that fewer than 10 percent of the criminal immigrants released back into our communities under the Zadvydas case is less than 10 percent, so do not try to give the impression that you do not have a

choice. You do have a choice on over 90 percent. The gentlewoman from Texas——

Ms. SALDAÑA. No, sir. That is not correct. Would you like me to give you those numbers exactly for the last——

Mr. GOODLATTE. The less than 10 percent is a figure we got from you.

Ms. SALDAÑA. That cannot be because I would have signed that letter probably.

Mr. GOODLATTE. Okay. We can come back to this. The gentlewoman from Texas, Ms. Jackson Lee, is recognized for her questions.

Ms. JACKSON LEE. Let me thank the gentleman for yielding to me, and let me thank you, Ms. Saldaña, for your service to the Nation. Thank you for your service as a U.S. attorney and your commitment to law enforcement and your compassion and passion in the leadership that you have given.

I take particular offense to the suggestion that a lifelong professional, such as yourself, would, in any way, seek to release individuals that should not be released. So first question that I ask, is it your purpose, Ms. Saldaña, as the Director of ICE, to release people without legal authority that are judged criminally and just to release them in the street? Is that your purpose as the Director?

Ms. SALDAÑA. It is not, Congresswoman.

Ms. JACKSON LEE. I am just going to ask a series of questions. As I do so, let me also take this moment to thank the 19,000 ICE employees every day that are on the frontlines and are assisting and protecting this Nation. We should be grateful for their service. I work with ICE employees. I happen to have my office in the Federal Building in Houston, and I want to acknowledge many of them as they work throughout our community; that, I think, is very important.

I also want to make the point that we are a Nation of laws and a Nation of immigrants. It feels to me that the line of questioning on this panel seems to ignore that this Nation was built on the hard work of immigrants and some who came not willingly. I know that in my history, but I would make the point is that we do better when we work together, and I was at the border when we had the surge of unaccompanied children, and I associate myself, by the way, with the comments of my colleague, Congresswoman Lofgren, as it relates to detention centers, but I will not ask that question.

And I saw the transfer from the border personnel into ICE and the responsibilities that occurred, and I understand what you are saying about not being able to project the numbers that come across regularly. So I want to put that on the record, but I also want to take note that those who are undocumented in this country have dropped under the Obama administration, dropped from 11 million, and it may be continuing to drop.

I also want to make the point that I see nothing in the leadership of President Obama or Secretary Johnson to, in any way, to adhere to the illegal releasing of individuals that should not be released. So let me raise these questions. There have been reports, of course, that there were 858 individuals that should not have been naturalized that were. I just want to ask you a yes or no question. The inspector general has provided two recommendations:

that ICE finish uploading into the digital repository the fingerprints it identified; that DHS resolve these cases of naturalized citizens who may have been ineligible. Are you in the process of doing that?

Ms. SALDAÑA. Yes.

Ms. JACKSON LEE. Do you do it willingly?

Ms. SALDAÑA. Of course.

Ms. JACKSON LEE. And do you acknowledge 858, I see is the number, that you deal with, prospectively, millions in this very large country of individuals that come under ICE authority over the years?

Ms. SALDAÑA. Yes, ma'am.

Ms. JACKSON LEE. And so, out of the 858, you are now correcting that process, and my understanding is that the inspector general is satisfied that you are doing that. Is that correct?

Ms. SALDAÑA. Yes.

Ms. JACKSON LEE. Then let me follow up with this. The majority has raised questions about the release of individuals with a criminal history. I understand you cannot talk about specific cases, but can you give me general examples of the reasons why an individual might be released from ICE custody? What are the reasons why a judge would grant release from custody?

And in the context of release of individuals with a criminal history, what types of crimes are we talking about? Are these violent felons, individuals with minor traffic offenses mostly, or individuals whose only crime is reentering after deportation, which I know there are many? And according to the data from ICE OPLA, ICE has exercised prosecutorial discretion and declined to deport some individuals with a criminal history. I understand that you cannot discuss that. Can you give examples of the kind of cases that they may be?

Number two, we have had over the last couple of days very tragic incidences in New Jersey, New York, and Minnesota. All initial public reports suggest that Ahmad Khan Rahami, New York, New Jersey; and Dahir Adan, Minnesota, came as young children and completed their entire primary and secondary educations in the United States. This is a collective effort by all of us, Members of Congress, Department of Homeland Security; on this question, do you just have any thoughts as to how ICE can work with other law enforcement agencies to prevent homegrown terrorist acts like this?

But the point I want to make is that the individual actors of the last terrorist incidences of the last 3 days were, in fact, individuals who were here in the United States, although they visited other countries. Can you answer the first one and second one? And I would appreciate it very much. Again, thank you so very much for your service to the Nation.

Ms. SALDAÑA. Thank you so much, Congresswoman. This is the point that I was making earlier. Every decision we make, and this is why we go about our business in the most appropriate and efficient way that we can, given the limited amount of dollars; \$6 billion sounds like a lot of money, but when you are talking about the vastness of our country and the immigrants that are in our country, you have to figure out a way to use your discretion to prosecute wisely, with the first emphasis on public safety.

So this statute lays out the laws, the regulations with respect to how we make those decisions. On apprehension, there is a section there. There is a section on who we must detain and who we can detain, and then there is a section on bond and who we release on bond. If it is up to us, and often it is not; the court will actually order a release on bond. I want to repeat and advise every Member of this Committee because I want you all to know this important fact: we do not ignore any immigrant who has a final order of removal and for whom we have a travel document. That person is going back to their country.

We need those two things, though, so when we are talking about removals and, with respect to this detention issue and the releases, two-thirds of these releases are out of our hands. This is what I was telling Congressman Smith a little while ago. We have Zadvydas, and we have got an immigration court system which has a half a million case backlog, which is going about their business as efficiently as they can, I am sure, but cannot get to everybody. So we will use our discretion to look at all the facts and circumstances of case.

Do they have a serious criminal conviction? If so, how long ago was that conviction? What is the amount of time that they have been in the country? Do they have citizen-born relatives or children? So many factors that are included in our review of those people and we make the best decisions we can.

Mr. GOODLATTE. Director Saldaña, let me interrupt you because I am looking at your official figures. If these are incorrect, I hope you will correct them by the end of this hearing, but what we have from you is fiscal year 2015, 11 percent, only 11 percent, were Saldaña's cases, that 37 percent, 7,293, were discretionary. You put those individuals back in our communities, where over 30 percent will be rearrested.

Ms. SALDAÑA. Seven thousand, right.

Mr. GOODLATTE. That is correct. That is just in 1 year.

Ms. SALDAÑA. What I was saying—

Ms. JACKSON LEE. Chairman, may I? You are looking at only one number. You should look at the immigration judge decisions.

Mr. GOODLATTE. No, no. I have got that in front of me so the Zadvydas cases is 11 percent, discretionary 37 percent.

Ms. JACKSON LEE. Well, I am going to allow her to do it and I am going to finish my point.

Mr. GOODLATTE. I welcome any correction to her figures before we finish the hearing though. The gentlewoman's time has expired and the gentleman from—

Ms. JACKSON LEE. Can I yield back just on one comment? I am yielding back, if I might to—I appreciate her answer to my question. Again, I want to emphasize the discretion and so the DACA young people, who were here in the United States, came in college, is a reputable decision by ICE and others that these individuals do not fall into that priority and are not dangerous. Prosecutorial discretion is within the law in the context of Director Saldaña, but thank you so very much. I yield back.

Mr. GOODLATTE. Thank you, Ms. Jackson Lee, and the gentleman from Michigan, Mr. Bishop, is recognized for his question.

Mr. BISHOP. Thank you, Mr. Chairman, and thank you, Director, for being here today. Thank you for sharing your time.

I was reviewing my materials last night regarding this hearing today, and I came across the core mission of ICE, and I found it interesting, and it is to protect America from the cross-border crime and illegal immigration that threaten national security and public safety. And ICE has been delegated the statutory authority to arrest, detain, and remove aliens who are illegally present or have otherwise violated immigration law.

Obviously, this policy, this mission that you have is extremely important to this Nation, and accordingly, you have been delegated substantial enforcement power to fulfill your mission. And I noted earlier that you indicated that you came into this job with a prosecutor's state of mind. That is how you think of your job, and I appreciate the fact that you do that because I think you recognize that we are a Nation of laws and that our responsibility is to enforce the law.

ICE has identified 23 jurisdictions that refuse to accept detainees. We know them as sanctuary cities. They refuse to accept detainees or requests for notification for aliens in their custody charged with State offenses. Does the existence of sanctuary cities threaten your ability to fulfill the mission that was just stated?

Ms. SALDAÑA. I am sorry. As I said in my opening statement, sir, we have to have the cooperation of local law enforcement in going about our job because they are inclined to encounter these folks first than we are. So the 23 that you are talking about, actually, that was my effort, as the manager of this agency, to try to identify what jurisdictions are having the most negative impact on our ability to get to prisoners transferred to us who have criminal records or otherwise meet the priorities, and so identified 25 at the time. We have worked incredibly hard, and I say we. I cannot take the credit. I am going to have to give some to the Secretary and to the deputy.

Mr. BISHOP. Director, I am low on time. So sorry, we have 5 minutes, and I do not mean to interrupt you, but my concern is that, as a former prosecutor, I am just wondering how you can continue to square the existence of sanctuary cities with the duty of a prosecutor to ensure justice and the constitutional duty of the state of equal protection of law.

It is specifically stated in the 14th Amendment, so I know that you have got all this great team in place, but it just seems to me that the policy of sanctuary cities prevents you from your core mission, and that is my concern. That is my concern, but it is also the concern of the folks that I represent and the constituents that I represent.

I am from a border city, Detroit. It is not mentioned in this list, by the way, but I have talked agents, and they do tell me that they have a policy of sanctuary cities, and I am sure that exists in a lot of them. That troubles me to think that I live in an area, a border city, and it has a sanctuary city policy. It worries me for my constituents, but it also worries me for one of your core objectives, which is to represent ICE officers and to protect ICE officers, and I am concerned that the existence of sanctuary cities puts your officers at risk, along with the citizens. It puts your officers at risk.

I do not know how that cannot be an issue with your office and with those officers on the street who really their hands are tied.

Ms. SALDAÑA. And I think I mentioned earlier, I worked with 100 counties in my U.S. attorney job. I had 100 different sheriffs and other law enforcement officials I had to work with. These cities that you are talking about, sir, have their own laws; either the State passes them or there is a local ordinance over which I have no control. All I can do is to use my best persuasive powers to work with them to try to bring them back to table.

The fact that we have 17 who are working with us of the 25 that I had on that list and 3 more that are beginning to work with us, it is a result of very hard work on the part of all of us at ICE. So I will continue to do that. I am not going to give up on anybody.

Mr. BISHOP. I appreciate that. I know my time is up, but I want to ask one more question. If you are running the shop and you have decided that—you have looked at this, and I know that you have had experience here, obviously, would you continue the policy of sanctuary cities?

Ms. SALDAÑA. ICE does not have a policy of sanctuary cities.

Mr. BISHOP. You are part of the enforcement process. Obviously, you were working in the environment of these cities where sanctuary cities exist, so you are a critical part of this process of enforcement of our laws.

Ms. SALDAÑA. And I am trying to gain back the trust of those communities who have given up on working with us. I will not give up on them.

Mr. BISHOP. I take that as you—

Ms. SALDAÑA. I want to work with every local law enforcement agency there is.

Mr. BISHOP. Okay. Thank you, Mr. Chairman. I yield back.

Mr. GOODLATTE. The gentleman yields back. The Chair will now recognize the gentleman from Georgia, Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman. America has a history of reliance on free and cheap labor to create wealth for owners of the means of production in this country. There has been a concerted effort throughout the years to attract undocumented workers from south of the border who provide cheap and reliable labor.

At the same time, America has prosecuted a drug war south of the border, also here in America, in the inner cities. It has been a complete failure here in America, and it is a complete failure, the drug war, south of the border. It has resulted in the destabilization of governments and fostered armed, violent gangs vying for control of the drug trade. The more violent the drug war becomes, the greater the profits for the most violent drug gangs, who can eradicate their competition.

Who gets caught in the middle? The innocent citizens in Central and South America. The top three most violent cities, due to criminal violence in the world, are located just south of our borders: Venezuela, Honduras, El Salvador, and the fourth is in Mexico. It has produced a humanitarian crisis of families, unaccompanied minors making their way from Central America or through Central America, from Central America, through Central America, through Mexico, up to the U.S. border.

Now this confluence of manmade consequences, intentional, foreseeable consequences comes at a time where this Congress continues to enforce a 34,000-bed mandate on your agency. In other words, we have created a private prison industrial complex that feasts on this confluence of foreseeable consequences. With respect to the 34,000-bed mandate, what is your daily average occupancy?

Ms. SALDAÑA. Well, the last time I checked in the last couple of days, we were a little bit over 34,000, something like 34,021, something in that neighborhood.

Mr. JOHNSON. And you generally keep the 34,000-bed requirement afield. Is that correct? You generally?

Ms. SALDAÑA. Yes, generally speaking. Let me just be sure I am understood on this point. We do not put a person in a bed because we have some kind of a quota. We put a person in detention because it is necessary to have them in detention in the process of removing them from this country, so my effort is not—

Mr. JOHNSON. Okay, and I know you have been interrupted quite a lot, and I have got to follow suit, too, because I want to get my questions in. The 34,000-bed mandate, does it include women and children humanitarian cases coming out of Central America to escape the drug violence?

Ms. SALDAÑA. The requirement is not to have those beds filled. It is to have those beds available, and it—

Mr. JOHNSON. Well, but those beds are available for that group of people; is it not true?

Ms. SALDAÑA. There is a group of that, a small group, comparatively speaking, that are families, women, and children.

Mr. JOHNSON. And also, for things like the targets of Operation Border Guardian, Central American families with children live, those raids result in people filling those 34,000 beds. Is that not correct?

Ms. SALDAÑA. I will have to disagree with the use of the word “raids.” These are focused operations where we have gone through a file and identified people who have final orders of removal and are ready to be removed.

Mr. JOHNSON. Now, these include children who have been brought to this country by their parents at an early age. They did not give consent. They just came with their parents. They are innocent, but yet they get swept up in operations like Operation Border Guardian and they get put into the private prison industrial complex to fill the 34,000-bed mandate. Is that correct?

Ms. SALDAÑA. No, children are not put into detention. They are turned over to our Department of Health and Human Services, separate.

Mr. JOHNSON. So the children are not part of the 34,000-bed mandate?

Ms. SALDAÑA. Children, I am talking about people under 18 years of age. They are turned over. The system, with respect to kids, is to turn them over to Health and Human Services, who finds a suitable placement outside of the detention system.

Mr. JOHNSON. But if they are in the detention system, they are part of the 34,000-bed mandate. True or false?

Mr. GOODLATTE. The gentleman is out of time, but you may answer the question. You may answer it, Director, if you would like.

Ms. SALDAÑA. Thank you. What you are talking about is children who are with their parent, typically a woman. I think the 34,000 is a separate number. That is adults. We are allocated money for families and children, so no, the 34,000 you are talking about is families, and those we have in the two institutions in Texas and Burke's facility, about 100 beds, maybe a little less, in Pennsylvania.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. GOODLATTE. The gentleman from Georgia yields back. The Chair will now recognize the gentleman from California, Mr. Issa.

Mr. ISSA. The gentleman from Ohio would be better to take first.

Mr. GOODLATTE. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you very much, Mr. Chairman. Madame Director, first of all, our colleague from Michigan, Mr. Bishop, asked a couple of questions you answered, but there is one I did not hear an answer for, and I would like to ask that again, if I could. He said that, when these sanctuary cities or jurisdictions, in some cases, because some of them are not cities; they are counties and things, but when they fail to honor ICE detainers, he asked you, well, would not that put your officers and the people they are trying to, in some cases, detain or arrest, does not that put them at risk as well?

Ms. SALDAÑA. I have testified before. Yes, sir. That is one of my concerns about not having this cooperative relationship is we do have to go out in the early morning hours in order to find people, unfortunately, many times, in their homes.

Mr. CHABOT. Thank you. I just did not hear the answer to that. And I guess, obviously, because, if the local community has them, they have got them arrested. They have already made sure they do not have a weapon. They have patted them down. They are safe there. As you said, in the early morning hours, your officer has to go out and pick them up again, they are at risk. They might now have a gun. It might be dark out. You do not know what is going on, so your officer is at risk, and the person they are trying to detain could also be at additional risk. So I guess the point is that these sanctuary cities are putting people on both sides at risk by having this policy.

Ms. SALDAÑA. And fortunately, there is some good news in this area, and that is what I was telling about, having turned at least the minds and hearts of at least 17 of those top-25 communities. So yes, no, that is one of the points we make with respect to those communities is help us here because these are law enforcement officers who are facing additional risks.

Mr. CHABOT. And I think the public has got the right to know, at least, what are some of the larger cities that we are talking about that are sanctuary cities?

Ms. SALDAÑA. I think we provided that. I think one of the congressmen mentioned San Francisco.

Mr. CHABOT. San Francisco; Bolder, Colorado; Philadelphia.

Ms. SALDAÑA. I can provide you a list, sir. I think we have provided it to the appropriations folks.

Mr. CHABOT. I think of your support staff is nodding in the affirmative.

Ms. SALDAÑA. Boulder.

Mr. CHABOT. Boulder is one of the larger.

Ms. SALDAÑA. It may well be.

Mr. CHABOT. Okay, because, I mean, I think this is something that is a national issue. I think the public has the right to know who some of these cities are that are abusing the process, and okay, I have got a couple other questions. Let me move on.

Giving the recidivism rate for criminal aliens, it is difficult to understand why aliens, who are repeat offenders of crimes, are far too often released back into our communities. How does ICE address the increased danger posed to our citizens, and what steps is ICE or any other governmental agencies taken to decrease the chance that an alien will reoffend?

Ms. SALDAÑA. Well, public safety, as I said earlier, is my primary concern. This is top of our minds. I have personally worked with our field office directors in determinations of prosecutorial discretion, and in those areas, the 37 percent of criminal releases that we have had that are at our discretion, I want to make sure that they are looking at all the facts and circumstances pertaining to a particular individual to make sure that we do not have people who are a threat to public safety released under our discretion.

Again, I point out two-thirds of the people released that have criminal records that you all have mentioned have been at either the instance under the direction the Supreme Court in the Zadvydas case or immigration judges letting folks go. The matter is out of our control.

Mr. CHABOT. Thank you. I think I have got time for about one more question, hopefully the answer, too. Criminal alien gangs, such as MS-13, are growing rapidly across the Nation I think as we all know. MS-13 violence and gang-related murders have risen sharply in cities all over the country.

The Department of Justice estimates there are 6,000 MS-13 members in the U.S. and over 30,000 in Central America and Mexico, and I happen to be in Guatemala and Honduras and Costa Rica recently, and you know, one of their points was one of the reason a lot of these young people are coming up here is they are trying to get away from the gang activity.

And so one of the main things we could do to keep from coming up here is to help them fight that gang activity. I think there is some merit in that. It is not the whole answer, but I think it is part of it. With the continued surge of unaccompanied minors illegally entering at our southwest border, we can only expect gang membership in this country, likely, to increase. Gang membership and aggravated felons are supposed to be an enforcement priority under the DHS guidelines, yet ICE's Office of Principal Legal Advisor closed removal cases against least 44 aggravated felons and 20 gang member since 2014. These individuals were released from custody, and ICE will not seek their removal. What is the purpose of enforcement priorities if ICE chooses not to adhere to the DHS guidelines?

Ms. SALDAÑA. Those guidelines are exactly that. As I said earlier, just like a Federal court judge makes a decision of releasing someone on the basis of all the facts and circumstances relating to that person, we do that also with respect to the discretionary releases. So if you have someone who has turned away from gangs, who is

clearly try to make their way in this country, having rejected that lifestyle, that may be an explanation for some of those 40. I do not know exactly the 40 individuals you are talking about, but we look, sir.

We look at all the facts and circumstances. Gangs have been part of our special operations that we have conducted. We yielded about 1,000 gang members in our last operation, and they are now in removal proceedings on their way out of the country, so it is definitely an enforcement priority, but that does not mean that every person who has had the moniker of being associated with a gang or a gang member previously would necessarily be detained if, in fact, they are in situations like I described, where someone is trying turn away from that lifestyle.

Mr. CHABOT. What about the aggravated felons?

Mr. GOODLATTE. The gentleman is out of time, but you may answer the question.

Ms. SALDAÑA. Yeah, same with the aggravated felons, if there is an aggravated felon. They are our priority. If they have been released—I sound like a broken record I know—it is because of something pertaining to that individual. Was this a felony that happened 30 years ago? The person has been in this country for 50 years.

I do not know, but our people are trained, and they have consistent training over a period of time with respect to what to look for, what information to give. I have set up a review panel within headquarters to look at every criminal release and to make sure that we have done it properly and that there is actually a reason for the prosecutorial discretion if it is being exercised in that case.

Mr. CHABOT. Thank you.

Mr. GOODLATTE. The gentleman from Ohio yields back. The Chair will now recognize the gentlelady from California, Ms. Chu.

Ms. CHU. Thank you. Director Saldaña, in 1996, the Immigration and Naturalization Service released a document called Operating Instructions on Questioning Persons During Labor Disputes. The document has been used by advocates since its release and has served as a valuable resource for worker and immigrant advocates to explain to undocumented workers what they should expect when ICE agents arrive at a workplace.

In particular, the guidance laid ways in which immigration law enforcement officers could avoid unknowingly becoming involved in a labor dispute; for instance, if information may have been provided in order to retaliate against employees for exercising their rights. Well, this spring, ICE revised the document, but has refused to make it public.

Director Saldaña, I think it is important for immigrants and labor advocates to know your agency's policies for governing ICE agent interactions with workers during employment disputes, so I would like to know why this document has not been made public.

Ms. SALDAÑA. The document that you are talking about having been revised?

Ms. CHU. Yes.

Ms. SALDAÑA. If it contains sensitive law enforcement information with respect to our procedures, our approaches to apprehension or things like that, that is something that we would not dis-

close to the public, but I will tell you, Congresswoman, we have involved nongovernmental organizations, representatives from law enforcement in the drafting of so many of our policies with respect to detention, with respect to reform on family centers. I have got an advisory committee on that very issue. I will take a look at that and see specifically why it is that we have not released it and certainly get back to you on that.

Ms. CHU. Well, I find it curious that you are saying it could be law-enforcement-sensitive because the document was made public for so many years since 1996.

Ms. SALDAÑA. And that is very unfortunate. I have made it a point to be careful with respect to our law-enforcement-sensitive information. That is not something I agree with necessarily because we should not be disclosing certain procedures, but I do not know if this specific report falls within that.

Ms. CHU. Well, the Interagency Working Group created by President Obama's executive action on immigration was charged not only with developing more effective policies, but upholding the value of transparency, and this would seem to fall right into the ideal of being transparent.

So I would have to say that I truly am puzzled by this lack the transparency on this particular guidance, especially when it is a change in the negative in terms of reducing the information available to people. Also, if you will not publicly release this new version of the operating instructions, are there alternative ways of allowing advocates to fully understand how ICE's policy in this area has changed?

Ms. SALDAÑA. Absolutely. There are ways to communicate with the general public and immigrants, in particular, and we will look at that with respect to this particular document. You have given me an opportunity to talk about my community relations officer in our Office of Community Engagement that we just stood up recently for that very reason that you are talking about.

I want an open line of communication, not only with law enforcement, sheriffs, police chiefs, but also with members of the community, chambers of commerce, immigrant advocates. I have personally met, and so has my senior advisor who is actually here, Liz Cedillo-Pereira, with a number of groups across the country to try to explain our policies and why we go about our business in the way we do. We are not trying to hide our policies. I think many of them are published and in the public domain, and in fact, rather than hide, I am trying to inform folks where our priorities are, who should be concerned, and that is top of the list is criminals and gang members and the like, and who is not a priority within our system.

So I am with you on transparency and open communication. I wish I could get out to more places, but I have a ball and chain, unfortunately, that leaves me in Washington often, but I do have now a community relations officer, either en route or already on board, in every one of our areas of responsibility, 25 of them across the country with the exception of Hawaii.

Ms. CHU. Well, at the very least, can the immigrant and labor rights advocates have meetings with your top administrators so that they can explain how ICE's policy, in this area, has changed?

Ms. SALDAÑA. We will certainly communicate on that policy with them. That will be included, along with things like where we apprehend people, sensitive locations, all these other issues that we try to deal with the advocate community on.

Ms. CHU. Thank you. I yield back.

Mr. GOODLATTE. The gentlelady from California yields back. The Chair will now recognize the gentleman from California, Chairman Issa.

Mr. ISSA. Thank you, Mr. Chairman. Director, thank you for your openness and candor on a number of subjects. I have got one more. ICE's policy of releasing removable criminal aliens under Priority Enforcement Program and the use of prosecutorial discretion has led to some tragic consequences.

No one doubts that we have had multiple, and they generally make national news for obvious reasons, but reports indicate that 83 percent of aliens released nationwide between 2012 and 2016 were convicted felons, and 30 percent of them committed serious felony offenses, such as rape, child molestation, and attempted murder. After the release from ICE, again, 30 percent committed additional felonies after their release.

Given the danger of recidivism by these individuals, or another way of putting it, Director, consider that, in your discretion, you have been wrong 30 percent of the time, and people have died. People have been raped. People have been molested. Is it not, in fact, time to change that discretion to make it less permissive?

Ms. SALDAÑA. I am not sure where that is coming from, Congressman, with respect to we have been wrong 30 percent of the time. If you are talking about total releases, that is one number, but as I explained earlier, two-thirds of those releases are not at our discretion; only about 37 percent are, and in those cases, we take very good care in reviewing files to ensure that there is a basis for that release. The women and men of ICE do not want to see a single immigrant go back and commit a criminal act. We are doing the best we can. Are we perfect? We are not. I have to admit that.

Mr. ISSA. Well, let us look at it another way. Under Rodriguez currently, if you do not foresee finishing the adjudication of a case after 6 months, you are obliged to release a non-legal immigrant, someone who came here illegally, who you are attempting to deport, and when you release them, they generally disappear, and unless you catch them again, they do not up. Is that not correct?

Ms. SALDAÑA. Many times.

Mr. ISSA. So for this Committee, the committee of jurisdiction, to change the law, even to change the Constitution if needed, is this not a problem that, currently, either you do not have the tools to adjudicate a case within 6 months, or the courts are not available to you for an expeditious 6 months, and you are being forced to release, knowingly, people who enter the country illegally, are appropriate for deportation, often violent criminals, and yet you are forced to release them under current Supreme Court decision and ninth circuit, right?

Ms. SALDAÑA. That is true.

Mr. ISSA. So if we look at both sides of the aisle here and we were to look prospectively into next Congress, is not the most im-

portant tool we would give you a pair of tools? One, the ability to adjudicate cases in less than 6 months, so that you do not come up against the mandatory release, and sufficient assets to, in fact, ensure that you never have to release somebody simply because you do not have the capacity to hold them.

Ms. SALDAÑA. That certainly would be helpful and if I can add to that point.

Mr. ISSA. Of course.

Ms. SALDAÑA. And I would love to sit with anybody who is looking at this issue in particular to assist in any way I can, but with respect to those people that we are required to release under the Supreme Court decision, many of them, and probably the majority, are because we cannot get travel documents from the country to which they need to be repatriated, and that is why we are working so hard with those foreign governments to try to change that.

Mr. ISSA. Well, then let me do a final question in my remaining 1 minute, and I will leave you plenty of time for an answer. I also serve on foreign affairs and my colleague, Mr. Chabot, and I serve together. Would it not be, at a bare minimum, appropriate to provide the Department of State the insistence on your behalf through the Secretary Johnson that, in fact, there be an outcome, meaning visas which are granted by the State Department, should be withheld by countries who refuse to take back the individuals who have committed crimes, done other wrong things, and for which we want to return them to their home country?

Is that not really the quid pro quo that should exist where Secretary Johnson should be able to get the Secretary of State to use his authority to effectively stop granting visas, at least reduce them, to countries that are not cooperating? Is that not a back and forth that the next Administration is going to have to deal with?

Ms. SALDAÑA. I think so, and the Secretary is very much aware of that, and he has taken under advisement how he should exercise that authority.

Mr. ISSA. Has he made that request to the Secretary of State?

Ms. SALDAÑA. As I said earlier, I believe he has one seriously under consideration. I do not know that the letter has actually been exchanged.

Mr. ISSA. Thank you.

Ms. SALDAÑA. But I do know he is aware of it.

Mr. ISSA. Okay. Thank you, Mr. Chairman.

Mr. GOODLATTE. The gentleman from California yields back. The Chair will now recognize the gentlelady from California.

Ms. LOFGREN. I would like to make a unanimous request for unanimous consent that the statements of the Lutheran Immigration Refugee Service, the National Immigration Law Center, Human Rights First, the Fair Immigration Reform Movement, Hebrew Immigration Assistance, and the American Immigration Council be placed in the record.

Mr. GOODLATTE. Without objection.*

The Chair will now recognize the gentleman from Florida, Mr. Deutch.

*Note: The material referred to is not printed in this hearing record but is on file with the Committee, and can also be accessed at:

<http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=105348>

Mr. DEUTCH. Thank you, Mr. Chairman. Director Saldaña, thanks for being here. I want to go back to something that the Chairman had asked initially when he asked about the 34,000 beds that Congress says must be filled and the reliance on private facilities to fill those beds.

And as you are aware, in our Homeland Security appropriations bill, Congress requires the detention, foolishly, I believe, requires the detention of 34,000 people each day, with no regard for actual need, and this requirement, referred to as the detention bed mandate, it costs more than \$2 billion per year or \$5.5 million per day. And the cost of holding someone in detention is approximately \$159 per day per person when, in many instances, there are other ways that the person can be monitored at significantly lower cost to the taxpayer, and I just wanted to go back.

I have serious concerns about the contracts between ICE and private detention companies that mandate that a fixed number of people be locked up at specific centers. The GAO has raised concerns about both the cost and the practice of lockup quotas, and groups like Detention Watch Network and the Center for Constitutional Rights have also spoken out against them. The lock up quota provisions obligate ICE to pay for a minimum number of immigration detention beds at specific facilities referred to in contracts as guaranteed minimums. And under these contracts, ICE pays for a minimum number of detention beds, even if they are not used, all to ensure that these private companies receive a profit.

And after July 14, 2015 Oversight hearing with Secretary Johnson, I submitted several questions for the record on guaranteed minimum detention beds that are contained in contracts between ICE and these private companies. The secretary responded and confirmed that contracts between ICE and private detention companies contain this guaranteed minimum of detention beds. These contractual provisions containing lockup quotas are entrenching the national detention bed mandate at the local level and encourage local ICE officials to keep people in detention.

Now over the summer, a report by the U.S. Commission on International Religious Freedom was released. It described a very disturbing statement from an ICE official at headquarters who described that bond rates are determined in different areas based on bed space. Rates are lower when there are fewer beds available since there is nowhere to detain the individual and vice versa. It is extremely troubling that bond rates are being set for people based on the availability of detention bed space in a locality instead of whether or not that person is a flight risk and whether or not they are violent.

So I just have a few questions. Does the statement from an ICE official accurately describe how bond rates are set?

Ms. SALDAÑA. No.

Mr. DEUTCH. That statement was incorrect? Could you elaborate?

Ms. SALDAÑA. Yeah, the bonds are set either by a court or, in those cases where ICE has some discretion, we look at the facts and circumstances of the case and set the bond amount at a number that will ensure that person's appearance for their day in court. So that is the instruction that is out there that is writing to our lawyers, and that is the way it is exercised.

Mr. DEUTCH. So the statement in the report that the ICE official said bond rates are determined based on bed space is absolutely inaccurate?

Ms. SALDAÑA. It is inaccurate.

Mr. DEUTCH. Do you agree that Congress requiring that these beds be filled takes away the discretion of law enforcement in a way that Congress does not do to any other law enforcement agency?

Ms. SALDAÑA. I have the ultimate responsibility for detention and detention centers, sir. The way I construe that that mandate, the mandate is to have those beds available. The mandate is not to spend X amount of money. I am not going to put somebody in a detention bed that does not need to be there, neither am I going to deny to release someone because detention space is not available if they need to be detained.

Mr. DEUTCH. Director Saldaña, I am sorry. I do not have a lot of time. I understand what you would do, but when these contracts are entered into with private detention facilities, does the detention mandate come into play? Do those contracts guarantee to these private operators that certain beds will be paid for on a regular basis?

Ms. SALDAÑA. We have to anticipate that there are a certain number of beds available. The 34,000 is a number that is obviously part of that mandate of available beds, so we have to have that available, whether those beds are used or not. That is the way that the statute is written.

Mr. DEUTCH. Right, so you would agree with me that Congress getting involved to mandate that there is a certain number of beds that are filled, which is the way it is interpreted by my colleagues here who put that misguided policy into law, that having that in there takes away the discretion of the ICE officials, and in fact, winds up guaranteeing profits for these private detention facilities?

Ms. SALDAÑA. That is not why we engage in these contracts with them, and I do not put someone in a detention bed just because I need to fill one.

Mr. DEUTCH. I know that not why you engage, but the private companies come to you and say, "We have to have X number of beds paid for. Congress says it, and Congress says that there has to be billions of dollars spent every year in order to ensure that. We are going to calculate these, our fees, based on what Congress says has to be done, regardless of whether you believe that those beds should be filled or not and whether the person is determined to be a flight risk or not."

Mr. GOODLATTE. The gentleman is out of time, but you are welcome to an answer.

Ms. SALDAÑA. I am sorry. I lost your question there. What was your question? I am sorry.

Mr. DEUTCH. It was a description of the way that these private detention facilities negotiate these contracts based upon the \$2 billion a year that Congress says has to be spent in large part for the benefit and, primarily, some would argue, for the benefit of these private detention companies.

Ms. SALDAÑA. I will tell you, they do not dictate to us what terms of the contract are. We let out a proposal that specified the terms of the contracts, and that 34,000 is a useful tool, because that is

how much money we have, in order to set that number, but that bed is not going to be filled unless it needs to be. And we are not going to release anyone who should be in a bed because we do not have money available.

Mr. DEUTCH. But then it is not your determination what beds are needed. It is the determination made by Congress that says that we are going to spend \$2 billion a year to make beds available. That is interpreted by my colleagues as those beds should be filled, which ultimately is going to benefit those private companies.

For everyone who has looked at this, to take away the discretion of ICE official to decide what should to be done here and to say that Congress is imposing it so that these private companies can come to and say, "Look, Congress has to spend the money, \$2 billion. Here is the number that we need in order to build this," does not seem like the right approach. That is all I am saying. Thank you, Mr. Chairman.

Mr. GOODLATTE. The gentleman reluctantly yields back, and the Chair would now recognize the gentleman from Arizona, Mr. Franks.

Mr. FRANKS. Well, thank you, Mr. Chairman, and Director Saldaña, thank you for being here. If I can, I want to take up where Chairman Issa left off. I thought his questions were profound, very cogent, because Issa suggested that, in court records, that "many of the criminals that they release were traffic violators or other nonviolent offenders," but Mr. Issa's comments there show that the percentage of criminals released by ICE nationwide, from 2012 to 2016, was 83 percent. I mean, is that right?

That is an enormous figure because, from my perspective, you know, the first purpose of the Federal Government is to defend and protect its citizens, and that seems like prima facie evidence that we are failing at least in this area, even if the effort is sincere. If 83 percent of those that we are releasing from 2012 to 2016 were felons, that is a big deal, and I do not know about the 30 percent recidivism. Do you think that is approximately correct, the 30 percent recidivism?

Ms. SALDAÑA. I have not done the math, sir, but if you have, I am not going to quibble with you.

Mr. FRANKS. Well, you know, I will not press the point, but if 83 percent of those that we are releasing are convicted felons, then there is something desperately wrong in the system somewhere. And I guess, you know, just in the re-offenses, we are showing statistics of around 130 murders or attempted murders since 2010, and according to a letter ICE provided in February to Senator Chuck Grassley, Chairman of the Senate Judiciary Committee, that is their number, but ICE has insisted that reoffenders were isolated examples, and these are not isolated examples.

These murders and these numbers are staggering, and I guess the next question that occurs is, what is ICE specifically doing now to prevent the release of these serious criminals onto America's streets?

Ms. SALDAÑA. As I mentioned earlier, sir, I share the same concern as you did. When I first arrived in this job, back now almost 2 years ago, this was of great concern to me. We need to be very careful in those releases. Setting aside the fact that about two-

thirds of those releases are required upon us by either courts or the Zadvydas decision, I have a committee at headquarters that reviews these criminal releases to make sure that the field office directors and supervisors in the field have taken to account, very carefully, all the facts and circumstances of that case and have made a decision based on facts, not feelings, but based on facts that that person does not present a threat to the community.

So mixed into the numbers that you are talking about are some of these people. Well, two-thirds of them, who are not being released by ICE. I assure you, no one at Homeland Security or at ICE takes the release of someone with a criminal conviction more seriously than we do.

Mr. FRANKS. Well, but the original question is, what are we doing now to ameliorate the fact that 83 percent of the people we are releasing are felons, and probably 30 percent of them are recommitting? I mean, I know you probably just do not know.

Ms. SALDAÑA. No, I do know. We have given specific training and instruction to the field of things to look for with respect to any decision on a release. That is discretionary. It is based on the entire file. It is not based on a feeling that someone is good or bad. It is based on the file and the facts and circumstances. Once that decision is made locally, we review the decision at headquarters to make sure that it is a well-reasoned decision and not just based on someone who has been careless. And as I said earlier, sir, I fall on my sword where we have not used our best judgment and discretion. I wish we were 100 percent perfect in the regard.

Mr. FRANKS. No, I understand. I understand. It sounds like you are making an effort, but there is still, you know, 130 people, Americans, who have died because we made the wrong decision there.

Let me quickly shift gears. About 140 Nations refuse to take back at least some of the citizens that come over here, and I think we have gotten a letter from, is it Gambia that we are sending a letter to that they—100 percent of them? Are there any others besides Gambia? I mean, is that the extent of our commitment there?

Are we sending letters to any other country and saying, if your people come here and break our laws or cross our borders illegally, we are going to send them back, or we are going to stop giving you visas? Is there any other country besides Gambia that we are doing that?

Ms. SALDAÑA. Well, the one we are talking about Gambia is where the Secretary actually communicates with the Secretary of State to—

Mr. FRANKS. But are there any other countries besides them that we are making motions in?

Ms. SALDAÑA. Speaking of letters, I have sent about 126 myself to countries. I have met with ambassadors of those countries. I have met with our ambassadors in those countries to try to do what we can to change their minds because these are obligations under world treaties. So we are doing our best to bring those people around.

Mr. FRANKS. Well, Mr. Chairman, my time is up, but I would just suggest to you they do not need to change their mind. We need to change our mind and say, if you do not take these back, we will

not offer visas in the future. It is a pretty simple equation. Thank you. Thank you.

Mr. GOODLATTE. The gentleman from Arizona yields back. The Chair will not recognize the gentlelady from Washington, Ms. DelBene.

Ms. DELBENE. Thank you, Mr. Chair, and Director Saldaña, thank you for being with us today. It has been reported that draft rules are being considered that would create national uniformity for immigration judges to allow child immigrants more time to obtain legal representation.

And in light of the ninth circuit's decision or opinion this week, I think these rules would be a highly welcomed step toward ensuring fair treatment for the most vulnerable individuals who are seeking refuge across our borders. So I wondered if you could share with the Committee your office's involvement in the discussions on those rules, if any, and as the agency that is responsible for carrying out removals following legal proceedings, do you have any comment on this issue?

Ms. SALDAÑA. Those rules you are talking about would bind the immigration courts, and those come under the Department of Justice, not the Department of Homeland Security. The immigration courts are under the Department of Justice. I am sure, at some point, if they are being considered now, that we may well be consulted. Quite frankly, I may not wait to be consulted. We may reach out and see if we can have some input, but that would be a decision by the Department of Justice and, ultimately, by the courts as to whether it is sufficient.

Ms. DELBENE. Well, in a concurring opinion in the ninth circuit case, two judges, one a Republican appointee and one a Democratic appointee, came together and they said, "What is missing here, money and resolve, political solutions that fall outside the purview of the courts."

So in other words, what is missing here is congressional action and the political will to ensure that young children fleeing violence are not facing the complexities of our immigration procedures alone.

The law requires fair hearings, and I would say that 3-year-olds who are alone before judges is not fair. So Director, what do you think is needed to help ensure that we are treating children, who come to our immigration judges in a manner that reflects at least the most basic notions of justice and due process, what do you think we should be doing to make sure that we are making sure those children's rights are protected.

Ms. SALDAÑA. I just, 2 weeks ago, was in Guatemala, Honduras, and El Salvador, and I saw and met several of those children, families, mothers, children, adult men. It is an important, significant issue. I am glad to hear that there are some rules that are being considered.

I agree with you that a 3-year-old cannot be expected to know what their rights and privileges are, but again, we will reach out to see if we can be consulted about this, but in the end, it is the Department of Justice, and that is my old department, so I know that they will take good care of promulgating something fair and correct.

Ms. DELBENE. Do you think that Congress has a role to play on this issue? So what would you recommend?

Ms. SALDAÑA. I have been preaching since almost the day I arrived that we need comprehensive immigration reform. We cannot just be dealing with one issue or the other, and this should be toward the top of the list, how children's rights are vindicated and represented; it should be a part of a comprehensive immigration reform package I believe.

Ms. DELBENE. And I just want to highlight that over 7,000 children have been deported, who have come from Central America, largely due to notification problems, lack of representation, difficulties navigating the process, and so we have impacted many, many children already. Does getting this right have an impact on the ability of ICE to properly carry out its mission?

Ms. SALDAÑA. Sure. I just want to be sure that I am clear on this. You know, our whole involvement with unaccompanied children is to process their entry into the country and then turn them over to the Department of Health and Human Services, who looks after their needs and where they are while their cases are being heard.

So it is a fairly minor role with respect to children, but obviously we have concerns and heart, and we believe that we need to have their issues treated differently and sensitively because of their age, but we have very little involvement with underage children.

Ms. DELBENE. Again, the law requires fair hearings, and I want to make sure that we have fair hearings for young children who are seeking refuge across our border, so thank you, and my time is expired. I yield back, Mr. Chair.

Mr. GOODLATTE. The gentlelady from Washington yields back. The Chair will now recognize the gentleman from Texas, the former U.S. Attorney, Mr. Ratcliffe.

Ms. RATCLIFFE. Thank you, Chairman, Director Saldaña. It is good to see you. I appreciate you being with us this morning, and I appreciate the candor of your testimony. That is not something that we always get in front of this Committee from some of the Administration officials that have been here.

I want to start out by asking you about a specific immigration case that tragically impacted a family in my Northeast Texas District at the hands of a man who was, for at least the second time, in this country illegally. Back in April, a van driven by that man, Margarito Quintero, swerved from his lane into the opposite lane and drove a car being driven by 42-year-old man by the name of Peter Hacking, who was a fire captain from Wiley, Texas. In the car with Mr. Hacking was his 4-year-old daughter, Ellie, and his 2-year-old son, Grayson. All three of them were killed.

Now, Mr. Quintero is a Mexican citizen who entered the United States illegally the first time that we know in 2006, where he was subsequently arrested and deported in 2008. And I do not know how many times he reentered the country illegally, but we know he was back for at least a second time in 2016 and obviously with tragic consequences.

Now, I want to start out and go on record to thank you, Director, for being responsive personally. When I called your office immediately after the incident, I did not expect to get a callback directly

from you, and I received one. And what you told me during the phone call about what ICE was going to do, was able to provide the Hacking family with a small, but I think very important, token of assurance that justice would not be ignored. So I am grateful to you, and I know the Hacking family is as well, and I want to go on record to that point.

I think the fact that I felt compelled to urgently pick up the phone and call you really speaks to the larger problem. I felt compelled to do that because I was aware of a similar accident in Nebraska that resulted in an illegal alien posting bail and then fleeing the country because ICE had declined, in that case, to issue a detainer.

So I was really acting out of fear, and I am sure you can understand why I was not about to let that happened to one of my constituents. So again, I want to thank you for issuing the detainer, so that we know that, if Mr. Quintero is somehow released from local custody, we have the comfort of knowing that he will go into Federal custody.

But let me ask about the specific case, if you can provide me an update, because Mr. Quintero has been charged with three counts of manslaughter by the Collin County D.A. and is awaiting trial on those charges, but can you provide me and the Hackings' family and my constituents some assurance that Mr. Quintero will also face Federal charges for illegal reentry?

Ms. SALDAÑA. Yes, and thank you for your kind remarks, Congressman. As I told you, I made a commitment regarding Mr. Quintero. He is from my State of Texas as well. The accident occurred in my State of Texas, and the victims were from Texas. We have a detainer on him. That means that we will be hearing, and we have no problems from Collin County. You are very familiar with the area with respect to cooperation on those detainees. We will keep an eye out on the trial, and hopefully, we will get a long sentence, and then after that sentence, we will retain custody. We will obtain custody and proceed further there.

Ms. RATCLIFFE. Thank you, Director. I guess as a side note, it is an issue outside of your jurisdiction, but I would, for the record, say that this really speaks to the larger issue that my constituents really care about, which is border security. To that point, even if you are perfect in your job, with respect to the enforcement of our immigration laws, if someone like Mr. Quintero can, after removal from our country, simply walk back and forth across an imaginary line and commit more crimes, then I think we are doing the American people a grave disservice.

But having said that, Director, an issue where you do have jurisdiction and can play a role in addressing situations like this that are frankly happening far too often is with respect to the 287(g) program. And so if county and local jurisdictions want to participate in the ICE 287(g) program to assist ICE in enforcing our immigration laws, why is ICE not leaping at the chance to do that? And the reason I say that is I know there are at least 10 jurisdictions where applications to be part of that have been pending with ICE for number of years.

Ms. SALDAÑA. Well, since I have been board, we have reviewed the requests of jurisdictions who have indicated an interest in

287(g). I have signed several letters approvingly the expansion of 287(g) to several jurisdictions, including some in Texas. So we are open for business with respect to that. We do look carefully at the jurisdiction, make sure that they understand what their role is, what our role is, but we will accept those requests and review them, and then, to the extent that they would be appropriate partners with us, under our requirements under 287(g), we will engage them.

Ms. RATCLIFFE. Okay, so can I take it, then, from your testimony that the backlog that is there, as I understand it, is maybe due to manpower, as opposed to—

Ms. SALDAÑA. No, actually, I can pretty much assure you—we can talk about specific jurisdictions as a follow up to the hearing, sir, but I can assure you that since I have been on board, we have been back to anybody who indicated an interest in 287(g) to inquire whether they still had that interest. Some of them do not, so we cannot do anything about that, but with respect to those who have, once they pass our requirements, we certainly will take a look at them to become our partners in that program.

Mr. RATCLIFFE. Great. Well, I am glad to hear that. Thanks, Director.

Ms. SALDAÑA. Thank you.

Mr. RATCLIFFE. I will yield back.

Mr. GOODLATTE. The gentleman from Texas yields back. The Chair will now recognize the gentleman from Rhode Island, Mr. Cicilline.

Mr. CICILLINE. Thank you, Mr. Chairman. Thank you, Director, for being here. Director, in your written testimony, you reference ICE's investigative efforts relating to individuals who are either seeking admission or engaged in immigration proceedings, with respect to the issue of human rights abuses and that you screen for human rights abuses. And I am working on a piece of legislation that will give the Department of Justice the authority to prosecute human rights abusers who commit crimes against humanity if they end up in the jurisdiction of the United States. So could you tell me what that screening process that you described looks like, what you do to prevent those who have committed human rights abuses from entering the United States?

Ms. SALDAÑA. Well, we have a tremendous network of visa security posts, where somebody is trying to come in on a non-immigrant visa. And that is one of the issues that is top at our list of things to consider. I have a unit within the Office of the Principal Legal Advisor, our lawyers, specifically focused and dedicated to the identification and apprehension and prosecution of human rights violators.

I would love for you to meet them, especially if you are working on this legislation; they are rabid about their work and very committed to making sure we are bringing these folks to justice. But that is very much a part of what our communications are with foreign governments. We are in 46 countries across the world, represented through our attache network, in getting information from local governments that they can offer us as we are making these reviews for visa security purposes and for just generally admission into the United States.

Mr. CICILLINE. And I would very much welcome the opportunity to meet with that unit—

Ms. SALDAÑA. Good.

Mr. CICILLINE [continuing]. Because I think it would be very helpful. The second thing I want to ask you about is first to extend a thank you to you for the work that the Department of Homeland Security and ICE has done for kind of taking a deeper look into how LGBT immigrants face particular challenges in the detention process and for issuing guidelines on how to address and deal with LGBT individuals in detention, but, of course, as you know, guidelines are only as good as the people who enforce them.

Would you tell us a little bit about what efforts are taking place to enforce and enhance the guidelines for LGBT individuals in ICE custody? And what training and instruction is underway for ICE officers with respect to this community?

Ms. SALDAÑA. We have a policy group that has been involved in looking at that guidance. Any time we issue guidance like that, we make sure that everyone who touches those cases where there might be a concern that someone is detained and they might be subjected to abuse, that we look at those cases and make sure that people understand what our guidance is, that we must be sensitive to these issues, that we must look through the appropriate environment to place these folks.

We must talk to the individuals themselves to see what their interests are. And, so, we train consistently on that subject, and we have input from the communities themselves into what we can do better with respect to that. You know, this is not an issue that we have dealt with a lot, I can say, but it is a very serious one in our view.

Mr. CICILLINE. I think we all remember, Director, that story from the summer of 2014 when we were receiving a large number of unaccompanied minors across our southern border. I know, at that time, the Department of Homeland Security put into place policies, particularly to deal with unaccompanied minors. Can you just tell us what those policies are today? Are we ensuring that these young children who have experienced sometimes unspeakable trauma in their travels to the U.S. or are facing abuse or violence if they are returned home, are they getting the help that they need with ICE?

I know some of this is not within your jurisdiction, but do they have access to counseling, to translation services, to council? And I recognize, as I said, some of this is not within your jurisdiction, but to the extent that you could inform us to the best of your knowledge, what is happening to these children who are without parents when they are coming?

Ms. SALDAÑA. Well, both our sister agencies, CBP Customs and Border Protection, which may be the first point on this when they see them at the borders or ports of entry, and our agents are trained in dealing with these young people, these children, babies, in many cases, for the limited time that we have some involvement with them.

As I said earlier, our involvement, basically, after that is to turn them over to the Department of Health and Human Services. I know, because I have had a couple of conversations with the folks there, that they work very hard to train their own people because,

in the end, they are responsible for their well-being until their cases are determined. But I am happy to certainly pass your inquiry along to them, so they can provide you some more fulsome explanation because I am not personally familiar with everything they do there.

Mr. CICILLINE. I would thank you for that, Director, and I yield back.

Mr. GOODLATTE. The gentleman yields back. The Chair will now recognize the gentleman from Utah, Mr. Chaffetz.

Mr. CHAFFETZ. I thank the gentleman, and Director, thank you so much for being here. I appreciate it. It was March 18th of last year that you appeared before the Oversight Committee, and you admitted that in fiscal year 2014 ICE had released some 30,000 aliens with criminal convictions. And then in fiscal year 2013, 36,007 criminal aliens were released.

And then in 2015, ICE released some 19,723 criminal aliens. As of February 11th of this year, 124 illegal immigrant criminals released from detention since 2010 have subsequently been charged with homicide. Two had homicide-related convictions before they were released for the first time.

So the question here is one of the rate of recidivism. Do you have any updated stats or perspective on the rate of recidivism of the criminal aliens that you are releasing back into the public?

Ms. SALDAÑA. You know, we have looked at that, and I know I have had some information that relates to that, sir, but I do not recall it just off the top of my mind. May I provide that to you?

Mr. CHAFFETZ. Yeah, and I understand it is hard to recite all of these statistics, you know, impromptu over a several-hour hearing, but could you provide us, what is a reasonable time to get back to us on that? Pick the date.

Ms. SALDAÑA. Someone is going to kick me. I am pretty sure—

Mr. CHAFFETZ. I am happy to do that if you would like.

Ms. SALDAÑA. I am pretty sure that, within the month, we can get it to you. I am going to get it to you as quickly as I can.

Mr. CHAFFETZ. Can we say by the end of the month? Can we shoot for that?

Ms. SALDAÑA. This month?

Mr. CHAFFETZ. Yes.

Ms. SALDAÑA. I do not think so.

Mr. CHAFFETZ. No? Okay.

Ms. SALDAÑA. It is 8 days away.

Mr. CHAFFETZ. I do not know why it would take a month, but—

Ms. SALDAÑA. At the outside, sir—

Mr. CHAFFETZ [continuing]. Two weeks, is that—

Ms. SALDAÑA. I will get it to you as soon as I can.

Mr. CHAFFETZ. All right. And this is of prime concern, is people that are here illegally and they commit a crime, they get convicted of that crime; they may or may not serve time, but the concern is that we release them back out into the public, as opposed to deporting them. So last time we were together, in our Oversight hearing, we talked about the ability—it is what Mr. Franks was, in part, talking about. If these countries to accept those, what countries are not accepting the deportation of criminal aliens?

Ms. SALDAÑA. We have a list of 23 countries that we refer to as recalcitrant; we just compiled that list recently because we want to keep a record of those that are not working with us.

Mr. CHAFFETZ. Can I get a copy of that?

Ms. SALDAÑA. Absolutely. And then we have a longer list, with respect to those that are not particularly cooperative, that we have difficulty. While we may honor some, maybe they do not take others back. So we certainly can provide that to you, sir.

Mr. CHAFFETZ. Well, as you know, since last year, there are provisions in the law that the State Department must act on. And the frustration is that the State Department has been empowered by the United States Congress, in fact directed by the Congress, to not allow them to grant visas from those countries, so why should we be issuing visas in a country to come to the United States when we are taking our criminal aliens and saying, "Look, this person is here illegally; they are from your country; you should go back?"

So where are we at in that process? If you have 23, what has been shared with the Secretary of Homeland Security? And, consequently, what has gone on to the Secretary of State for action under the law?

Ms. SALDAÑA. I am very pleased with the fact that the Chief of the Bureau of Consular Affairs, the individual who worries about all her consulates and embassies across the world, I have been meeting with her several times, personally, as we go over information relating to what can be done with respect to these uncooperative countries.

Mr. CHAFFETZ. Can you please update us as to where we are at in that process? Because you have given the information to the Secretary of State, but the Secretary is required under the law to act on that. But I need exposure as to what has been given to the Secretary of State, where in the food chain we are breaking down, because we need action taken on some of these countries. I really do believe that, if some of these countries faced a consequence, the other countries might sit up and, you know, pay attention.

So I have got to hit on more thing, and I have got only 3 minutes left of my time here. We have been given this document; it is the lack of identity documents in the refugee process, from Homeland Security. Again, I do not mean to play "got you," but I would like to know if you are familiar with this document and get your reaction to it. There is some very troubling aspects to it. I do not know if you are immediately familiar with this document. I would like to confirm its authenticity with you. But I need to understand if this is something that you are familiar with.

Mr. GOODLATTE. The gentleman is out of time, but you may answer the question, Director.

Ms. SALDAÑA. Somebody just handed me a document. I presume it is the one you are talking about that is entitled—

Mr. CHAFFETZ. Yes, yes.

Ms. SALDAÑA. I have never seen this document before. I do not know how long you have had it. But I—

Mr. CHAFFETZ. I have not had it very long. Mr. Chairman, I just hope that if the Director could get back to us about its authenticity and any comments, particularly the first two sentences of the sec-

ond paragraph are extremely concerning to us. Thank the Chairman for his indulgence.

Mr. GOODLATTE. The gentleman from Utah yields back. The Chair will now recognize the gentleman from California, Mr. Peters.

Mr. PETERS. Thank you, Mr. Chairman. I would like to begin by asking a unanimous consent to enter into the record two articles dated the 21st and 22nd of September from San Diego Union Tribune that highlight the urgency of the situation facing Haitian entrants in San Diego.

Mr. GOODLATTE. Without objection.

[The information referred to follows:]

11/21/2016

Church that has been helping Haitians hits breaking point - The San Diego Union-Tribune

Church that has been helping Haitians hits breaking point

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The Christ United Methodist Church has been helping 2010 earthquake victims from Haiti. Despite a growing number of refugees that need to be helped and dwindling supplies, the church says it will continue to help no matter what.



By **Kate Morrissey**

SEPTEMBER 21, 2016, 6:00 PM

A church that has been sheltering Haitian migrants called on San Diegans for help at a press conference today, saying it cannot continue to house the high numbers of new arrivals with the resources that it has.

The Christ Ministry Center, part of the United Methodist Church in Normal Heights, has accommodated about 200 people per night since Haitians began arriving in May, said Andrea Guerrero, executive director for Alliance San Diego, which has been helping the church as part of the San Diego Immigrant Rights Consortium.

She said space in the church for sheltering those in need was meant to house about 24 people. Haitians continue to come across the border from Tijuana as fast as U.S. Customs and Border

<http://www.sandiegouniontribune.com/news/immigration/sd-me-haitians-church-20160921-story.html>

1/3

11/21/2016

Church that has been helping Haitians hits breaking point - The San Diego Union-Tribune

Protection can process them, about 50 people per day, she said.

"I wouldn't call it a crisis. If the community hadn't stepped up, if the church hadn't stepped up, we would be in crisis," Guerrero said. "But we do need help."

The National Guard on Monday opened two facilities for the influx of migrants, but the space will be available for only two weeks.

Guerrero said the new arrivals were displaced by the 2010 earthquake in their homeland, and first moved to Brazil or Venezuela. Because of political and economic turmoil in those countries, Haitians have made the decision to head north to the U.S.

"You believe that the United States will take you in," Guerrero said at a news conference outside the church. "You believe that because, in 2010, President Obama said to the people of Haiti, 'We will not forget you, and we will not forsake you. We recognize the colossal and catastrophic disaster that has happened here in Haiti, and we know that it will take years to rebuild Haiti.'"

Guerrero said the organizations are asking for three forms of help — cash donations to the church, a new space to house the group and assistance from those who speak Haitian Creole, French or Portuguese. She said the relief effort needs a 15,000-square-foot facility to be able to take care of the new arrivals in one place.

Guerrero said several thousand more Haitians will be arriving in the coming months, needing help. They have generally spent two to six weeks in transition in San Diego before moving on to places such as Miami or New York, she said.

She estimated that 4,000 Haitians have come through San Diego, and about 10 percent have stayed.

The Rev. Pat Murphy, director of Tijuana's Casa del Migrante, said there are so many Haitians waiting to cross into the U.S. that if one arrived today in Tijuana and asked Customs and Border Protection for an appointment, it would not be available until Oct. 12.

"This is far from over," he said.

Assemblywoman Toni Atkins, D-San Diego, also urged San Diegans to help. She said she would be giving a donation to the church.

"When disaster strikes, when crisis hits, Americans step forward to help however we can," Atkins said.

Stheker Regisma, 29, said he arrived in San Diego on Sept. 1 with his wife and two children, ages 10 months and 2 years.

He said in Portuguese through an interpreter that he left Haiti for Brazil in 2010 after the earthquake. When he couldn't find work, he and his family decided to take the four-month journey to the U.S., much of it by foot. They were robbed of food and cash along the way, he said.

<http://www.sandiegouniontribune.com/news/immigration/sd-me-haitians-church-20160921-story.html>

2/3

11/21/2016

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They had intended to go all the way to Miami, where there is a large Haitian community, but a friend who was supposed to pay for travel from San Diego told him recently that money has run out. Regisma said that, for now, he's looking for construction work, to get a place for his family to stay in San Diego.

When asked if he hopes to return to Haiti one day, he said, "It's very difficult. There's no way to feed my family right now in Haiti."

The Haitians are here legally, Guerrero emphasized. They wait in Tijuana for appointments with federal authorities, and when it's their turn, they're allowed into the country on "humanitarian parole" that allows them to stay for three years from the date of entry.

According to Ginger Jacobs, an immigration attorney who has been acting as a liaison between the group and Immigration and Customs Enforcement, they're also given a notice to appear in immigration court for removal proceedings, with a date to be determined. She said none of the new arrivals have had a court date set yet.

"I'm not sure what the purpose was in giving them the notice to appear," Jacobs said. "It seems a little inconsistent with the idea of, 'You're here for three years.'"

She said the notice is usually given to asylum seekers, which is why many initially reported that the Haitians were asking for asylum. She said the Haitians were also required to check in with ICE officers regularly, almost like an immigration form of probation.

"They don't just want people disappearing into the U.S.," Jacobs said.

She said Casa Cornelia, which provides pro bono immigration legal services, has been screening the Haitians for those who might have valid claims for asylum or other, more permanent, immigration statuses.

Jacobs said the U.S. has a long history of helping survivors of natural disasters and giving them temporary entry.

"It would be inhumane to tell them, 'Sorry, go back to Haiti and starve,'" she said.

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This article is related to: Earthquakes, Toni Atkins

11/21/2016

Advocates criticize decision to deport Haitians - The San Diego Union-Tribune

Advocates criticize decision to deport Haitians



By Kate Morrissey

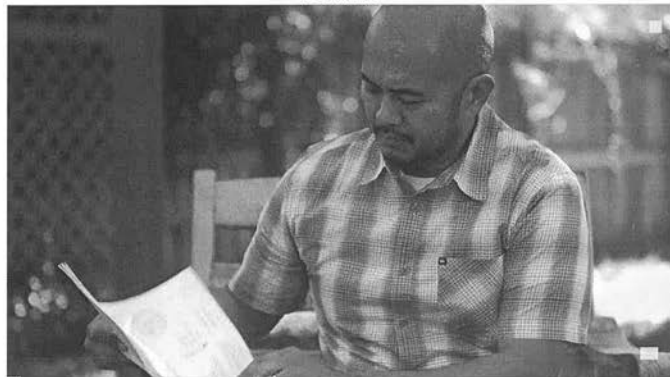
SEPTEMBER 22, 2016, 3:00 PM

Activists who have been helping newly arrived Haitian migrants in San Diego objected on Thursday to the Department of Homeland Security's decision announced early in the day to resume deportations to Haiti.

The department had ceased deportations to Haiti following the 2010 earthquake, with the exception of those convicted of serious crimes. Officials decided that the situation in Haiti has improved enough that deportations of other undocumented individuals can proceed. This decision comes as thousands of Haitians who had been living in Brazil and Venezuela after the earthquake have arrived in large numbers since May, asking to be let in to the U.S. from Tijuana.

"This policy change does not reflect our values. Period," Hiram Soto said in a statement on behalf of the Southern Border Communities Coalition, an umbrella organization which includes groups like Alliance San Diego.

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"The administration's unconscionable decision breaks a promise the American people made to not forsake or forget the Haitian people after the devastating earthquake of 2010," Soto said. "Haiti, the poorest nation in the Western Hemisphere, is in no condition to receive people back. In fact, reports on the ground are that the

<http://www.sandiegouniontribune.com/news/immigration/sd-me-haitian-church-20160922-story.html>

1/2

11/21/2016

Advocates criticize decision to deport Haitians - The San Diego Union-Tribune

country is worse off than before the earthquake; only last month, the United Nations finally took responsibility for a still-raging cholera epidemic."

Until Wednesday, U.S. Customs and Border Protection officers had been allowing the migrants into the country with a three-year temporary pass through "humanitarian parole," according to Ginger Jacobs, an immigration attorney who has been assisting the migrants.

Alliance San Diego has been helping at Christ Ministry Center in Normal Heights, where many of the arriving Haitians have found shelter after being let in and before moving on to final destinations of Miami or New York. About 10 percent of the Haitians let into San Diego in the past four months have stayed in the area, the alliance estimates. More than 5,000 Haitians have been processed at the San Diego field office this fiscal year, most since May, according to U.S. Customs and Border Protection.

The church, which has housed about 200 migrants per night since May, put out a call for help Wednesday for volunteers and donations from the San Diego community in anticipation of the thousands more expected to arrive at the border asking for aid.

Now new arrivals will be put in expedited removal proceedings, which means they will be immediately sent back unless they can show that they're afraid to return home for a reason that would qualify for asylum.

"These survivors are displaced people that urgently need humanitarian assistance, not harsh enforcement," Soto said.

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Mr. PETERS. Thank you, Madam Director, for being here. I had some questions on that topic. Since 2010, Haitian entrants have been given a special refugee status when attempting to enter the U.S. Just this morning, Secretary Johnson announced that he, yesterday, directed that enforcement decisions with respect to Haitian nationals should be consistent, standard practice guided by him memorandum dated November 20, 2014.

The justification for this change in policy seems to be rooted in “sufficient improvements” to the situation in Haiti. However, my understanding is that the position of the Haiti Government is that they do not have the ability or capacity to accept the return of these individuals. So can you please elaborate on the justification for this change in policy toward Haitian entrants?

Ms. SALDAÑA. Yes, that was announced by press release, I think, by the Secretary today. And he cited in there two reasons for this. One was the changed conditions, as he has perceived based on all of the facts and information that was available to him since that terrible disaster in 2010. You know, at one point, beginning then, the then Secretary of Homeland Security stopped deportations of Haitians. They let up a little bit on it a year or two later, but since then, it culminated in today’s announcement.

The other aspect of it is the number of Haitians that are at our borders seeking entrance; treating them the same as everyone else will still afford them, Congressman, rights that are provided by statute, with respect to asylum and refugee status. They will be looked at in terms of their claims; probably immigration courts will make a final determination. But it does not take away or strip those rights; they will still have them.

Mr. PETERS. Do you think ICE has the funding and capacity necessary to detain and process the Haitian migrants currently waiting at the southern border?

Ms. SALDAÑA. Those and the other increased numbers of families from Central America are really taxing our resources.

Mr. PETERS. So in San Diego, we have welcomed about 4,000 Haitian entrants. And the community has stepped up to accommodate the individuals. Are you aware of assistance that is available to our community to help with the temporary housing of folks like this?

Ms. SALDAÑA. Well, I will tell you who has always stepped up in this regard is religious organizations. I am just so impressed by, both on the border that I have visited myself, personally, and also in San Isidro and San Diego that I have been to personally, also; these organizations step up to help, and I know that we will advise and work with organizations to assist with respect to some humanitarian aid that can be made available to those people that need it.

Mr. PETERS. Do you have any sense of what kind of increase in your budget would be necessary to provide the assistance we need at the border and in housing people like this?

Ms. SALDAÑA. I really do not know, sir. I have not studied it to that extent. I certainly can converse with you more later.

Mr. PETERS. Can you get back to me on that?

Ms. SALDAÑA. When I study on that, yes.

Mr. PETERS. Finally, just to raise the issue with respect to Zika, we have people migrating from and through areas known to be home to Zika, active Zika zones. Obviously, the community and the Nation has to make sure that these people get access to care as quickly as possible. And, obviously, Congress has to do its part.

I am optimistic we will do something about that soon. But it takes an average of 4 weeks for these entrants to receive benefits. Do you have any plans, assuming sufficient timing, to accelerate that time line in light of the public health concerns about Zika transmission? So in other words, the 4 weeks it takes to get benefits?

Ms. SALDAÑA. Immigrations and Customs Enforcement?

Mr. PETERS. In general, taking people who are coming through areas with active Zika problems.

Ms. SALDAÑA. Yes, I know that there is medical screening that is done both by CBP, our sister agency, and ourselves. With respect to the bigger picture on the overall public health concern, I wish I could help you on that, Congressman, but I really am not familiar with all that.

Mr. PETERS. Do you have any suggestions for us in how we would reduce that 4-week timeline between when people ask for help and get it concerning Zika?

Ms. SALDAÑA. I can certainly give that some thinking and studying. I am afraid that is another issue that I just cannot give you more information on that is informative in any way.

Mr. PETERS. Well, I am out of time. I appreciate your being here today. And, Mr. Chairman, I yield back.

Ms. SALDAÑA. Thank you.

Mr. GOODLATTE. The gentleman from California yields back. The Chair will now recognize the gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Director Saldaña, it is good to have you here. First, let me say, I know in May you suffered what every parent I know hopes and prays they never have to endure. And so our thoughts and prayers have been with you since we found out about that. I know Michael has to leave a tough spot that will never be filled. And I know that it has got to be tough to continue on, but we appreciate your continuing to do what you can.

Ms. SALDAÑA. Thank you, Congressman. I appreciate that.

Mr. GOHMERT. Yeah. So that is something every parent, I know, shares. But I wanted to share with you about an experience I had earlier this year down on the border in the McAllen Sector that had taken over, as I understand, being the busiest. And, of course, you are aware that is a wider area of the Rio Grande.

I hear people talk about areas where you can walk across. And, obviously, that is not one of them. You do not make it across unless you have got help, and normally, it is in one of the rafts that coyotes are bringing across. But, as I am sure you are aware, the State of Texas had appropriated millions of dollars; they have got four boats down there on that section of the Rio Grande; and those boats are extremely well-equipped. And in all the nights I have spent on the border down there, one, some months back, was on the fast boat that Texas DPS had, has the thermal technology. We had night vision, so we were able to use the night vision, but the thermal technology was just amazing.

And as we went down the river, and we would spot people when it is 2:00, 3 in the morning, when people are gathering up along the edge of the river behind trees, bushes, and other things, you know they are probably going to try to cross. And we know that there were Homeland Security employees along the way, some Border Patrol.

And when we would see somebody, like, okay, there was two, maybe three, looks like they are carrying something. They are squatting, looks like they are trying to bring something in, not people. And that is communicated to Homeland Security personnel. And there was balloons down there they would send up, and they could focus in and use the technology, and generally, we would get the response back, "Yes, we have those individuals spotted."

Go further down the river, and there was 16, 17, maybe 18 people. They are not carrying anything. Looks like they are just going to try to come across. And as we spotted things, that was conveyed to Homeland Security personnel. And the balloons, the cameras would zoom, and they would find who we had reported. We went down to a bend in the river and turned off the engine and waited for a long period of time.

And then the Federal employees finally communicated, "Look, these people are still continuing to stay right where they are. They know you turned off your engine. They know you are down there somewhere where you could get back to them before they cross. So why do you not go on back to your dock, and we will intervene when they try to cross?" And so they asked, is that all right with me?

I said, "You are the guys in charge." So we went back to the dock. And as soon as we got back to the dock, we got the report that, when they heard our engines going far enough away, that the groups that we had seen came across. And they were happy to report that they had gotten all of the 18 that came across that we had spotted with the thermal and that the people that appeared to be bringing large amount of drugs in, they had not gotten them. They are somewhere on the U.S. side, but they got all of those that came in.

And I said to the Texas DPS, they did not intervene and tell them to go back before they got onto American soil? And the Texas guy said, "That is what they do. They let them come on to U.S., and then we had got the report they had all been successful processed in and with no intention of deporting them anytime soon." Now, I know there have been around, what, 160,000 or so that have been turned back that are being counted as apprehensions and deportations. But are you aware of ICE just taking people that were caught red-handed coming in illegally and then just in process, rather than being deported?

Mr. GOODLATTE. The gentleman is out of time, but you may answer the question.

Ms. SALDAÑA. I am. Congressman, I suspect that would have been our sister agency, as you said.

Mr. GOHMERT. Under Border Patrol.

Ms. SALDAÑA. Right. Yeah.

Mr. GOHMERT. But then you had ICE people backing them up. You know you have got a lot of ICE folks there.

Ms. SALDAÑA. Oh, if there were drugs on them and we had our hands on them, we would not have let them go.

Mr. GOHMERT. Well, they were never captured. That is the point. But, anyway, it is now on your radar, and it really needs to be dealt with, and I appreciate the Chairman's indulgence. Thank you.

Mr. GOWDY [presiding]. The gentleman from Texas yields back. Director, I want to thank you for your patience this morning. I am last. I am going to bounce to a couple of different topics. So if it is confusing, it is only because of the question.

So we are going to start with visas and schools. Would it be helpful to your student visa fraud enforcement efforts if all schools that accept foreign students were required to be accredited?

Ms. SALDAÑA. It makes a difference, sir. Of course. It makes a difference to have accredited institutions that will be partners with us in our efforts to keep track of students who are coming in from foreign countries.

Mr. GOWDY. How much of an issue has it been, or have you seen these kind of visa mills where you bring students here with no expectation that they actually pursue and education?

Ms. SALDAÑA. Well, we had a tremendous case announced that was there at the press conference with my former colleague, Paul Fishman, the U.S. attorney in New Jersey, where we brought down a university that was just an academic mill. I am very proud of that work done by our Homeland Security investigation agents, who had an elaborate undercover operation going on and there were multiple, 18, 19, for some reason, is coming to mind, of people that were involved in that. It is a matter we take great interest in and focus our investigations on.

Mr. GOWDY. I want to ask you about two reports and then you can tell me whether the reporting is accurate and, if so, if there is an explanation what that may be. There is a report that you have asked for less money for alien detention and less money for fugitive operations. Is it true that your request was for less money? And if so, why?

Ms. SALDAÑA. My request?

Mr. GOWDY. Yes, ma'am.

Ms. SALDAÑA. I think the Department of Homeland Security submits a broad request for all agencies. Obviously, they consult with all of us. But I would not have asked for less money in those areas.

Mr. GOWDY. Okay. There is another report that, at least in previous years, occasionally, ICE attorneys would not appear for hearings in front of judges. And that probably strikes you and I as being unusual, that the government attorney would not be there. Have you heard that? Was it a practice? Is it still a practice?

Ms. SALDAÑA. That is an issue that I am sure would have come to my attention if it were in any way systemic. Has one missed a hearing here or there? You know, I would not be apprised to that. But I assure you that I have met so many of these attorneys, I cannot imagine that being a practice and a report that is really valid. I am not familiar with the report you are talking about, but our lawyers would not just ignore a court setting.

Mr. GOWDY. Well, that is why I ask. And I will make no presumptions as to the validity of that report. But if you could have

someone, not yourself, but just somebody check to see whether or not that is currently an issue or was an issue in the past. It is hard for me to understand how the government could be represented if the attorney does not show up. But you would have that same feeling because you had the same job. So last two issues: sanctuary Cities.

When I go back home, and I suppose it is true for Johnny in Texas, it is really hard for the people we represent to understand, particularly in light of what they perceive to be a Federal Government that is willing to get involved in certain State and local issues, not being as animated about jurisdictions; they consider themselves sanctuary cities. So I heard you say you are working on it. Other than the power of persuasion, which may or may not work, what tools do you need to be able to get local jurisdictions to cooperate?

Ms. SALDAÑA. I am going to have to tout our success, though, Congressman, with respect to the 17 of the 25 that I targeted. The 25 that have the most impact on our declined detainers. We have 17 working in a very robust manner with us. So the Secretary did something right in his communications with local law enforcement in different places that he went to as the deputy and myself personally did.

But I believe our message is getting through. I think that is an indication of our message getting through, that there are real problems, not the least of which is the safety of our officers who are going out there to make apprehensions because we could not get the cooperation of a local jail to turn over folks. But we continue in our work.

I think there are some communities that I am just not sure we are ever going to get to the point we need to get to, but we are going to keep trying, all of us. I have that specific instruction from the Secretary.

Mr. GOWDY. All right. Last question. Zadvydas, there are not that many things on Capitol Hill that are bipartisan, but dealing with the decision in Zadvydas would be one of them. I have had a number of my friends on the other side of the aisle have constituents impacted by that Supreme Court decision.

What can we do or what can you and I and you and Congress do together? It is impossible to explain to constituents why, in some instances, countries who benefit from foreign aid from us will not accept their foreign nationals back. It is just hard to explain that. So what do we need to do to get the State Department more fully engaged, so it is not you and me answering the question? Because it is really up to them. So what can Congress do about Zadvydas?

Ms. SALDAÑA. I see two different issues here. One is the work with the countries that are not taking their people back, and the other one is the decision that compels us to release people. Sir, I have read that decision; I do not know if you have. It is very legal in nature, but the bottom line there is the constitutional concerns of holding somebody indefinitely when there is little chance that we are going to be able to return them to their countries.

You are right; none of our people like doing that. And it hurts us in our heart of hearts that that is the deal. But I am happy to

consider, and work with you, any options that you have with respect to those countries, I am working diligently with Michelle Bond, the Chief of Consular Affairs. She has really taken a personal interest and made a commitment to me that we are going to take a look at each one of these countries and do what we can.

The world is a complicated place, as you know, and I would not put myself in the shoes of the Department of State to know all the ramifications of a sanctions decision, for example, against a country with whom our relationship is complex, to say the least. And I do not know all of those ramifications. All I know is that I have a difficult problem to deal with, and she is working with me at Department of State to try to get to a better place than we are today.

Mr. GOWDY. Well, with the indulgence of my friend from California, because this is a bipartisan issue, Congresswoman Lofgren and I have discussed it; Congressman Courtney has an issue, Congressman Welch on the other side of the aisle. What is the dominant explanation given from countries who will not accept their nationals? What is their excuse for not doing so?

Ms. SALDAÑA. Quite frankly, in many instances, there is no explanation. Some of the factors are instability of a country. I mean, what do we do with Syrians, you know, returning them to the country? That country is in the throes of terrible turmoil.

So, often, it is instability; it is a claim that our proof of citizenship is not sufficient, even though we believe it is. It is the lack of records and the lack of records kept by certain governments that they just do not value recordkeeping the way we do, and so establishing citizenship becomes a problem. It is a varied picture of things that are brought up to us as to why they will not accept their people back.

Mr. GOWDY. All right. I would ask my friend from California if he had any concluding remarks. We want to, on behalf of all of us, thank you for your service and for your testimony today. And these Members will have 5 legislative days to submit questions to the record. And with that, we thank you for your time.

Ms. SALDAÑA. Thank you.

[Whereupon, at 12:36 p.m., the Committee adjourned subject to the call of the Chair.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

Questions for the Record submitted to the Honorable Sarah Saldaña, Director, U.S. Immigration and Customs Enforcement, Department of Homeland Security*

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November 21, 2016

Sarah Saldaña
Director
U.S. Immigration and Customs Enforcement
500 12th Street SW
Washington, DC 20536

Dear Director Saldaña,

The Committee on the Judiciary held a hearing on oversight of U.S. Immigration and Customs Enforcement on September 22, 2016 in room 2237 of the Rayburn House Office Building. Thank you for your testimony.

Questions for the record have been submitted to the Committee within five legislative days of the hearing. The questions addressed to you are attached. We will appreciate a full and complete response as they will be included in the official hearing record.

Please submit your written answers by Friday, December 23, 2016 to Alley Adcock at alley.adcock@mail.house.gov or 2138 Rayburn House Office Building, Washington, DC, 20515. If you have any further questions or concerns, please contact or at 202-225-3951.

Thank you again for your participation in the hearing.

Sincerely,


Bob Goodlatte
Chairman

Enclosure

*Note: The Committee did not receive a response from this witness at the time this hearing record was finalized and printed.

Submitted by Chairman Bob Goodlatte

1. A September 8, 2016, report by the DHS Office of the Inspector General (OIG) report found that 1,029 aliens from special interest countries with multiple identities and final deportation orders were improperly granted citizenship by USCIS. In 858 cases, USCIS granted naturalization despite the fact that the digital fingerprint records for the aliens were not available for review because ICE did not upload them to the relevant database. Some of these individuals have access to sensitive sites. The identities of all 1,029 individuals are now known, but the OIG found that ICE has only investigated 122 cases, and DOJ has accepted only two cases for prosecution. The report also found that there are 148,000 other files of aliens with final deportation orders or who are criminals or fugitives that ICE has not reviewed.

- a. How many of the 148,000 other files has ICE reviewed to date?
- b. In how many of those files has ICE uploaded the fingerprint information to the relevant databases?
- c. In how many of the cases in which an alien was granted naturalization has ICE recommended civil or criminal denaturalization to the Department of Justice?
- d. In how many cases has ICE initiated removal proceedings against those whose naturalization was revoked?
- e. How many of these cases has ICE presented to the Department of Justice for criminal prosecution?
- f. What actions has ICE taken to ensure that fingerprint information is timely provided to relevant databases or law enforcement and intelligence agencies?

2. During the ICE oversight hearing on April 14, 2015, you told the Committee that ICE released 30,558 criminal aliens in FY 2014, who had a combined total of 79,059 criminal convictions associated with them. We later learned that they now have 92,347 convictions—13,288 more than originally reported. ICE was aware of this larger number in March 2015, before your testimony. In a letter to Senator Grassley on February 11, 2016, you stated that 1,607 of those aliens were

convicted of 2,560 additional criminal offenses after their release from ICE custody, as of July 25, 2015. Please provide the number of convictions for those aliens prior to their release from ICE custody and the number of convictions for those aliens after their release from ICE custody and as of the following dates: April 10, 2015, February 11, 2016, and September 22, 2016. When providing the data for each date, please specify whether a conviction was related to a criminal offense committed prior to the alien's release from ICE custody or after release from ICE custody. Please state how many of the 30,558 aliens were rearrested by ICE following their initial release and the number of aliens who were released for a second or subsequent time following their initial release.

3. The U.S. Court of Appeals for the Ninth Circuit has held that aliens in removal proceedings who are subject to mandatory custody are entitled to a bond hearing after six months. You recently stated that this decision, *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013), has had an adverse effect on public safety. You stated that 35 percent of aliens released under that decision are re-arrested by other law enforcement agencies and 41 percent fail to appear for their scheduled court date and abscond. How many aliens have been released by ICE under the *Rodriguez* decision to date? How many have been re-arrested by a law enforcement agency? How many have been convicted of additional offenses? What are those offenses?

4. During the current Administration, worksite enforcement has dramatically decreased. Although ICE has consistently imposed administrative fines against employers, all metrics related to arrests and prosecutions of unlawfully employed aliens have plummeted. The number of cases initiated nationwide has declined from a high of 3,904 in FY 2012, to 1,732 in FY 2015. All arrests have plummeted—administrative arrests are down 78%, from 1,118 in FY 2012 to 245 in FY 2015; criminal arrests have dropped 54%, from 520 to 237 during that same period. Through the third quarter of FY 2016, ICE made only 61 administrative arrests and 85 criminal arrests, resulting in only 74 criminal indictments. Please provide a detailed explanation for the sharp decrease in worksite enforcement investigations, administrative arrests, criminal arrests, and prosecutions.

5. There are reports that beginning in or about 2013, one or more Offices of Chief Counsel within the Office of the Principal Legal Advisor (OPLA) developed and implemented a policy or practice whereby ICE attorneys were instructed to not appear at scheduled removal hearings before an immigration judge in cases where an alien and/or the alien's attorney appeared and sought relief, resulting in an immigration judge awarding relief to the alien without government counsel present. This grant of relief generally conferred permanent residence on the alien through a grant of adjustment of status, cancellation of removal, or other form of discretionary relief. One such practice or policy was allegedly known as the Smart Accelerated Resolutions Team (SmART) Prosecution. Such policies or practices were allegedly approved and/or authorized by then Director of Field Legal Operations James S. Stolley, Jr., who is currently the Chief Counsel in the Minneapolis Field Office. They were also allegedly approved and/or authorized by others in higher positions in OPLA leadership. Mr. Stolley allegedly encouraged and/or directed all Chief Counsel to adopt similar practices or policies that resulted in ICE attorneys not appearing at scheduled hearings, not conducting witness examination, not appealing adverse decisions, and other actions that resulted in a final award of relief to the alien.

- a. Has any such policy or practice ever existed? If so, when did you become aware of its existence and how did you become aware? If so, please state the specific dates during which the policy or practice was in effect. Please state the specific locations where such policy or practice was implemented.
- b. Please provide copies of all documents and communications, electronic or otherwise, within ICE or between ICE and any other person or entity related to the Smart Accelerated Resolutions Team or similar policy, including all reports, memoranda, executive summaries, findings, conclusions, and emails.
- c. Would a policy or practice that instructed ICE attorneys to not appear at a removal hearing to represent the interests of ICE against an adverse party be inconsistent with the rules of professional conduct and ethical obligations of a government attorney to represent the governmental client?

- d. Did any attorney within ICE raise any concerns regarding such policy or practice?
 - e. Was the ICE Ethics Office consulted regarding the development or implementation of such policy? If so, was a decision or opinion rendered by that Office regarding the ethics of such policy or practice? When was that decision or opinion rendered? By whom? Please provide copies of all documents related to, or arising out of such decision or opinion.
 - f. Was the ICE attorney union consulted regarding such policy or practice? If so, what was the response? If not, why not?
 - g. Did anyone within OPLA communicate with anyone in administration within the Executive Office for Immigration Review (EOIR), including the Director, Deputy Director, the Office of the Chief Immigration Judge, an Assistant Chief Immigration Judge, or similar official either before or after the development or implementation of such a policy? If so, what response was communicated by EOIR to OPLA and when was it communicated? Who within EOIR communicated the response to OPLA? To whom was it communicated?
 - h. Has any OPLA employee been subjected to disciplinary action or other negative treatment for failing to follow such policy or practice? If so, please identify the employee, the action taken, the person taking such action, and the date on which such action was taken.
 - i. Has any OPLA employee been recognized positively, such as receiving any type of award or similar recognition, for implementing or following such policy or practice? If so, please identify the employee, the action taken to recognize such employee, the person taking such action, and the date on which such action was taken.
6. Please provide statistics for criminal alien releases for FY 2016, which should include a categorized listing of their criminal convictions prior to release by ICE and the reasons why they were released.

- a. Please state whether any alien was arrested for another offense subsequent to release by ICE, stating the nature of the subsequent offense and whether such arrest resulted in a conviction.
- b. Please state the number of criminal aliens who were rearrested by ICE after their initial release and the reason for the rearrest.
- c. Please state the number of criminal aliens who were rearrested by ICE following their initial release and then released again by ICE, along with the reasons for the subsequent release.
- d. Please state whether the alien was released pursuant to a discretionary determination by an ICE officer, a bond order issued by an immigration judge or other court (indicating whether ICE appealed the bond order), or under the Zadvydas decision.

7. A report by the GAO last year found that immigration judges have granted asylum to 3,709 aliens whose asylum claims were prepared by attorneys and document preparers who were convicted of immigration fraud. Many of the aliens were involved in the fraud and investigators stated that most of the aliens had not suffered persecution. According to the Department of Justice, none of those cases had been reopened by an immigration judge.

- a. What action have you taken to investigate those cases?
- b. Have you instructed your ICE attorneys to review those cases and file motions to reopen those where fraud is suspected?
- c. How many motions seeking reopening were filed as of September 22, 2016? How many have been filed currently?
- d. Have any of those cases been reopened by the immigration judge?
- e. Has the grant of asylum been rescinded in any of those cases? If so, how many? If not, why not?

8. On February 28, 2016, the New Orleans Police Department (NOPD) issued a written policy titled, "Immigration Status," which appears in Chapter 41.6.1 of the NOPD Operations Manual. The relevant policy statements (1) prohibit NOPD officers from inquiring about an individual's immigration status; (2) generally prohibit officers from assisting or supporting ICE's immigration enforcement; and (3) mandate that any ICE request for support or assistance shall be declined. The referenced policy statements appear to violate 8 U.S.C. § 1373. According to the testimony of a New Orleans city official before the Committee's Immigration and Border Security Subcommittee on September 27, 2016, NOPD consulted with ICE in November 2015 regarding the policy at the "local and headquarters level." The official testified that ICE informed NOPD that the policy complied with all "federal ICE requirements for law enforcement." He also testified that in December 2015, the ICE Chief Counsel for the New Orleans Office of Chief Counsel met with the federal judge overseeing the consent decree, along with NOPD and Department of Justice officials, and that the ICE Chief Counsel represented to the judge that there were "no substantive concerns about the policy." The same witness previously testified before a state legislative committee that DHS "at its highest levels" was consulted while the policy was being drafted.

a. Did anyone within ICE communicate with any other person regarding whether the policy, as written or implemented, violated or could be construed to violate 8 U.S.C. § 1373? If so, please describe the communication. Who made the communication? When was it made? To whom was it made? Was any action taken on the basis of such communication?

b. On September 23, NOPD issued a revised "Immigration Status" policy to expressly state that it "is to be construed in accordance with 8 U.S.C. § 1373(a)" It further states that officers are not prohibited from "[s]ending to ICE, or receiving from ICE, information regarding the citizenship or immigration status of an individual as provided in" the preceding paragraph. The revised policy would appear on its face to not include § 1373(b), which prohibits any restriction on "requesting" information from ICE regarding an individual's immigration status. Does the exclusion of § 1373(b) from the application of the policy affect to any degree ICE's ability to apprehend, detain, or remove any alien?

- c. Has anyone within ICE conducted a legal review of the February 28 NOPD "Immigration Status" policy or the September 23 NOPD "Immigration Status" policy, before or after they were issued, to determine if either violates or potentially violates any federal law or regulation? If so, who reviewed it and when? What was the conclusion of the legal review? Who made that conclusion and on what basis? If not, why not? Please explain in detail.
 - d. Does any previous or existing NOPD policy or practice regarding the immigration or citizenship status of any individual or communication with ICE regarding the immigration or citizenship status of any individual affect to any degree the ability of ICE to apprehend, detain, or remove any alien? Please explain in detail.
 - e. How many detainers or requests for notification has ICE issued to either NOPD or the Orleans Parish Sheriff's Office (OPSO) during FY 2016? How many have been declined or not honored? Of those, how many were declined or not honored based on any policy by NOPD or OPSO related to the immigration status or citizenship status of any individual?
 - f. Please state in detail what action, if any, you have taken to persuade NOPD and OPSO to rescind or revoke any policy or practice regarding the immigration or citizenship status of any individual or communication with ICE regarding the immigration or citizenship status of any individual.
 - g. Please provide copies of all communications, reports, findings, conclusions, memoranda, or other documents, including emails and other reproducible forms of communication, related to the February 28 NOPD "Immigration Status" policy, the September 23 NOPD "Immigration Status" policy, or any similar NOPD policy.
9. On May 31, 2016, Department of Justice Office of Inspector General (OIG) issued a report finding that multiple local jurisdictions may be in violation of 8 U.S.C. § 1373, as they each had laws or policies directly related to how those jurisdictions could respond to ICE detainers, and each limited in some way the authority of the jurisdiction to take action with regard to ICE detainers. The OIG identified a sample of 10 state and local jurisdictions that had such policies: the

State of Connecticut; the state of California; City of Chicago, Illinois; Clark County, Nevada; Cook County, Illinois; Miami-Dade County, Florida; Milwaukee County, Wisconsin; Orleans Parish, Louisiana; New York, New York; and Philadelphia, Pennsylvania. Additionally, the OIG also found that “the laws and policies in several of the 10 jurisdictions go beyond regulating responses to ICE detainees and also address, in some way, the sharing of information with federal immigration authorities.” Do you agree with the OIG’s findings? For each of the 10 identified jurisdictions, please state whether its policy or practice regarding the immigration or citizenship status of any individual or communication with ICE regarding the immigration or citizenship status of any individual affects to any degree the ability of ICE to apprehend, detain, or remove any alien.

10. On September 19, Committee Chairman Bob Goodlatte and Senate Judiciary Committee Chairman Charles Grassley sent a letter to DHS Secretary Jeh Johnson, requesting information on Thong Vang, a criminal alien gang member and violent child rapist from Laos, who reportedly shot and critically injured two correctional officers in Fresno, California on September 3, 2016, after his release from ICE custody. Among other documents requested, the Chairmen specifically requested that Secretary Johnson provide the Enforcement and Removal Operations (ERO) Executive Summary. The committee is aware that Executive Summaries are prepared by ERO in all high profile or significant cases involving criminal aliens who are or have been in ERO custody. In your response on behalf of Secretary Johnson on November 15, you failed to provide the ERO Executive Summary for Mr. Vang’s case. Notably, in this Committee’s oversight role that specific document is routinely requested from DHS when requesting information about a criminal alien. However, requests for the ERO Executive Summary are routinely ignored by DHS. Please confirm whether an ERO Executive Summary exists regarding Mr. Vang. Please state the date on which it was prepared. Please state the specific reason why it was not provided in your response to the Committee’s formal request. Please provide a complete, unredacted copy of the ERO Executive Summary for Mr. Vang’s case.

Questions Submitted by Rep. Doug Collins

1. Director Saldana, a May 2016 GAO report about Department of Homeland Security management of short-term immigration detention holding facilities recommended that ICE implement a more effective system to track the total time an alien is in custody after they are arrested. While ICE has a system in place to track time in custody, GAO reports that the data needs to be reviewed in order to maintain the quality of what is reported. Do you have a plan in place for how to achieve this? If so, can you explain it and give a timeline for it?
2. On April 28th, you testified before the House Oversight & Government Reform Committee on the release of criminal aliens. At that hearing, you claimed that “at least 2/3” of the criminal aliens released were because of *Zadvydas v. Davis*. In fact, the official data show that only 2,166 releases were because of *Zadvydas*—or a mere 11%. How was your testimony so far off from the actual figure?
3. The FY15 criminal alien statistics show that 1,643 criminal aliens were detained in Georgia before being released. Do you know the whereabouts of all of them?
4. Of the nearly 10,000 criminal aliens released because of a “redetermination” by an immigration judge, how many cases did DHS appeal the decision or did you choose to use the immigration judge as cover to claim your “hands are tied”?
5. A recent DHS Inspector General report highlighted the unacceptable and, to me, very disturbing, news that USCIS granted US citizenship to more than 850 ineligible individuals. These individuals had already had final removal orders issued against them under another, presumably false, identity. Now I know you are not USCIS—you are the Director of ICE. But why this concerns me for today’s hearing is that the IG report indicates that these individuals were able to obtain citizenship because your agency failed to digitize approximately “148,000 fingerprint records of aliens with final

deportation orders or who are criminals or fugitives.” The report also stated that the FBI digital fingerprint system is missing fingerprint records because in the past ICE hasn’t forwarded them fingerprint records.

This is unacceptable. Citizenship of the United States of America is a privilege, yet these people who broke are laws and had been ordered removed were able to get it in part because your agency’s failure to digitize records. I want to know why that happened. This is not only a major security risk, but also a slap in the face to the legal immigrants waiting to have their naturalization requests approved.

I would like to know what steps ICE is taking to fully digitize fingerprint records? I would also like to know why ICE failed to digitize these fingerprints and how it plans to review the system to make sure additional individuals are not granted their naturalization requests in error.

1. How many civil and criminal cases have been opened against the 858 individuals who erroneously obtained U.S. citizenship?
2. Is it fair to imply that when faced with the dilemma of being unable to verify fingerprints, the default decision of U.S. immigration officials was simply to grant U.S. citizenship?
3. Given the 858 “mistakes” made by U.S. immigration officials, how can the American people have confidence that our federal government can thoroughly vet incoming refugees to exclude any individuals looking to carry out acts of terror?

Questions submitted by Rep. Mike Bishop

1. What sort of criminal encounters do your agents have refugees? Does your agency track whether or not an alien entered lawfully, through the VISA process, asylum, or refugee process? And if so, can you speak to how many, and the nature of crimes, you are seeing among those who came to the United States through the refugee process?